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A MANUAL

FOR THE

GUIDANCE OF OFFICERS

IN THE

PARTITION OF ESTATES,

THAT IS

BUTWARRAS,

UNDER

ACT VIII (B.C.) OF 1876:

DIVIDED INTO

PART I.—PARTITION OF ESTATES.
PART II.—THE CERTIFICATE PROCEDURE.

PUBLISHED UNDER THE AUTHORITY OF THE BOARD OF REVENUE, L.P

CALCUTTA:

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PREFACE.

The Hon'ble F. M. Halliday.

THIS Manual has been compiled from Chapter III of Volume II of the Board's Rules (edition of 1881). The law on the subject of the Partition of Estates (commonly called Butwarras) is now contained in a single Act, VIII (B.C.) of 1876, which has been reprinted herein. The changes made in the rules from time to time have been brought up to date. The Board's circular orders on this subject have been examined, and all likely to prove useful have been incorporated. The forms of Register and Return now in use have also been included. A number of forms have been given, which have been approved for use in the Patna Division, and may well be adopted elsewhere. Notes have been added to some sections of the Act, containing rulings of the High Court and decisions of the Board in important cases, and other matter which it is desirable to preserve in a convenient form. An extract from the Inspection Manual has been given in the Appendix for the use of Inspecting Officers. An Index has been added.

2. This Manual is one of the series referred to in the preface to the Board's Rules, 1888, as being in course of preparation, and in future reference should be made to it, and not to the rules in the edition of 1881, which it supersedes. It will not be reproduced as a separate Chapter of a Volume of Board's Rules, but it is to be distinctly understood that it is issued under the authority of the Board, and that it is incumbent on the Revenue officers concerned to be guided by the rules contained in it.

3. This Manual may be briefly cited as "The Butwarra Manual, 1889." It is interleaved with blank pages for the purpose of inserting any additions or alterations made

subsequent to its issue. Officers are requested to enter all correction slips in their proper places. Errors and omissions should be brought to the notice of the Board.

4. The law previously in force on the subject of partition of estates was consolidated and amended by Act VIII (B.C.) of 1876. This measure was before the Bengal Legislative Council on the following dates—in 1874, 19th December: 1875, 9th January, 13th March, 10th April, 13th November: 1876, 18th, 30th March; 1st, 8th, 24th April; 19th August. It is sufficient to refer to these proceedings without quoting them at length.

A Bill to amend Act VIII (B.C.) of 1876, with a view to provide that no separate estate, liable for an annual amount of revenue less than 10 rupees, should be created under the provisions of the Act was before the Bengal Legislative Council on the 16th December 1882, 1st December 1883, 12th January 1884. But on a report, dated 9th February 1882, of the Select Committee, the Government decided to abandon for the time the proposal to legislate on the question, and the Bill was withdrawn on the 23rd February 1884.

C. E. BUCKLAND,

Offg. Secretary.

BOARD OF REVENUE, L. P.,
The 31st January 1889.

"9th January 1884."

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PART I.

THE law in force regarding the Partition of Estates in the Provinces subject to the Lieutenant-Governor of Bengal is contained in Act VIII (B.C.) of 1876 only.

ACT VIII (B.C.) OF 1876.

(*Received the assent of the Lieutenant-Governor on the* 26*th August* 1876, *and of the Governor-General on the* 18*th September* 1876.)

An Act to make better provision for the Partition of Estates.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the partition of estates: It is enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called the "Estates' Partition Act, 1876."

Local extent.

It extends to the territories for the time being under the administration of the Lieutenant-Governor of Bengal;

Commencement.

And it shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General, which date is hereinafter referred to as the commencement of this Act.

Laws repealed.

2. On the commencement of this Act, the Regulations and Acts specified in the schedule hereto annexed, to the extent mentioned in the third column thereof, shall cease to have effect in the territories subject to the Lieutenant-Governor of Bengal, save so far as they repeal or modify any other Regulations or Acts, and save so far as regards the partition of any estate which shall be pending at the time of the said commencement.

The partition of any estate which shall be pending at the time of the commencement of this Act shall (except as provided in the next succeeding section) proceed and be completed in the same manner as if this Act had not been passed.

NOTE.—Where several steps had been taken to promote a butwarra, and the Collector decided that he would not bring the butwarra under section 3, the Board held that the proceedings were to be completed under the old law under this section. (Board's Proceedings of 29th June 1878, No. 239, Collection 1, File 37.)

Certain provisions of Act applicable to partition cases pending at the time of its commencement.

3. The provisions of this Act, so far as they relate to the continuation of a partition from the point which it has reached, or to the staying of the partition of an estate, or to striking a partition case off the file, may be applied, at the discretion of the Collector, in all cases of partition of estates pending at the time of the commencement of this Act; provided that, before applying such provisions to the continuation of a partition, the Collector give due notice in each case to the parties concerned that such provisions will be applied.

NOTE 1.—Four butwarra cases were instituted in July 1876, *i.e.*, several months prior to the date on which Act VIII (B.C.) of 1876 came into force (which was on the 4th October 1876 under the 3rd clause of section I of the Act). During these months several steps were taken to promote the butwarra. It may specially be noticed that on the 5th August 1876 both parties (the two shares being equal) applied to the Collector to have the estate divided under section 22 of Regulation XIX of 1814 on the basis of a former partition measurement made in 1858. The Collector on the 16th November referred to the butwarra proceedings already taken, and decided under section 2 to carry out the butwarra under the old law, instead of bringing it under the new Act by issuing a notice under section 3 to the parties as he might have done. When the papers were submitted for the Commissioner's confirmation, that officer quashed the proceedings, ordering that the partition should be made under the new Act. On appeal the Board held that (*a*) as the Collector did not bring the case under the new Act by issuing a notice as required by this section, and as he had properly treated the case as pending at the time of the commencement of the new Act, he was right in completing the proceedings under the old law; and that (*b*) inasmuch as the commencement of the butwarra was considered, under the old law, to be from the date of the application, there having been no such provision in the old law as section 31 of the new Act, section 5 did not apply to the Collector's order of the 16th November 1876. (Board's Proceedings of 29th June 1878, No. 239, Collection 1, file 37).

NOTE 2.—*See* also note 1 to section 11.

Interpretation clause.

4. In this Act—unless there be something repugnant in the subject or context—

"Amin."

(i) "Amin" means a person who is appointed by the Collector or Deputy Collector to make any measurement, survey, or local inquiry, or to prepare the papers showing the result of any measurement, survey, or local inquiry.

Applicant."

(ii) "Applicant" means any person who has applied to the Collector under the provisions of this Act for the separation from the parent estate of lands representing his interest in such parent estate, and for the assignment to him of such lands as a separate estate liable for a demand of land revenue distinct from that for which the parent estate is liable.

"Assets of land."

(iii) "Assets of land" include the rental of the land with respect to which the expression is used, and all profits derived by the proprietors out of such land from rights of pasturage, forest-rights, fisheries, and all other legal sources.

"Assets of an estate."

(iv) "Assets of an estate" mean the assets of all land included in an estate.

"Board."

(v) "Board" means the Board of Revenue for the provinces for the time being subject to the Lieutenant-Governor of Bengal.

"Chapter."

(vi) "Chapter" means a chapter of this Act

(vii) "Deputy Collector" includes any Assistant Collector, Deputy Collector, or Sub-Deputy Collector whom the Collector may appoint (as he is hereby empowered to do) to effect a partition and allotment of assessment under this Act, or to conduct any of the proceedings connected with such partition and allotment.

"Deputy Collector."

(viii) "Estate" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land revenue

"Estate."

(ix) "Joint undivided estate" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land revenue, and of which two or more persons are proprietors.

"Joint undivided estate."

(x) "Land" does not include the houses and buildings standing thereon.

"Land."

(xi) "Lieutenant-Governor" means the Lieutenant Governor of Bengal for the time being, or the person acting in that capacity.

"Lieutenant-Governor."

(xii) "Parent estate" means any estate for the partition of which proceedings may be in progress under this Act, or of which the partition may have been effected under this Act

"Parent estate."

(xiii) "Proprietor" includes every person who is in possession of any estate under partition, or of any portion of such estate, or of any interest in such estate, or in any part of such estate as owner thereof, whether such person be or be not a recorded proprietor of the estate.

"Proprietor."

(xiv) "Recorded proprietor" means a person whose name is registered on the Collector's General Register of revenue-paying lands as proprietor of an estate, or of any share or interest therein.

"Recorded proprietor."

(xv) "Section" means a section of this Act.

"Section."

(xvi) "Separate estate" means any distinct estate which may be formed by the partition of a parent estate under this Act, or for the formation of which proceedings may be in progress under this Act.

"Separate estate."

(xvii) "The Collector" means the Collector of the district on the revenue-roll of which the estate under partition, or which it is proposed to bring under partition, is borne, and includes any officer whom the Board may generally vest (as it is hereby empowered to do) with the powers of a Collector under this Act, and to whom the Collector of the district has, with the sanction of the Commissioner, delegated (as he is hereby empowered to do) any of his duties and functions in respect of the partition of any estate; and any officer whom the Board may specially vest (as it is hereby empowered to do) with the powers of a Collector for purposes of any partition under this Act.

"The Collector."

(xviii) "The Commissioner" means the Commissioner of Revenue to whom the Collector engaged in making the partition is subordinate.

"The Commissioner."

5. All partitions of estates which shall be ordered to be made after the commencement of this Act, shall be made under the provisions of this Act, and no such partition made otherwise than under this Act shall relieve any lands from liability to Government for the total demand of land-revenue assessed upon the estate of which they form a part.

Future partitions to be made under provisions of this Act.

NOTE.—In a case in which several steps had been taken to promote a butwarra instituted under Regulation XIX of 1814, and which the Collector decided not to bring under the new Act (as he might have done by issuing a notice under section 3), the Board held that the proceedings previous to the 4th October 1876 (the date of the commencement of the Act) constituted it a butwarra case pending under the old law, so that an order of the Collector, dated the 16th November 1876, did not make this section applicable to the case. (Board's Proceedings of 29th June 1878, No. 239, Collection 1, File 237.)

6. The amount of land revenue assessed on each separate estate shall bear the same proportion to the whole amount of land revenue for which the parent estate was liable, as the assets of such separate estate bear to the whole assets of the parent estate.

Revenue to be assessed on each separate estate.

7. Except as hereinafter otherwise expressly provided, the average of the amount of rent which was payable for any land by the cultivating ryots during the three years immediately preceding the year in which proceedings are taken under this Act for the partition of the estate shall, for the purposes of this Act, be deemed to be the rental of such land;

Definition of rental.

and if any land is not let, but is held and occupied directly by the proprietors or any of them, the annual rent for which such land might reasonably be expected to let shall be deemed to be the rental of such land.

Exception 1.—If the rent payable by the cultivating ryots on account of any land shall have been determined by any Court of competent jurisdiction, or shall have been altered with the consent of the said ryots at any time during the said three years, the amount so determined, or the amount to which the rent may have been so altered, may, if the Collector think proper, be deemed to be the rental of the land.

Exception 2.—If any land is held on a permanent tenure which was created by all the proprietors of the estate, and which by any law for the time being in force is protected against the purchaser at a sale for arrears of revenue, the rent payable by the holder of such tenure shall be deemed to be the rental of such land.

Exception 3.—If any land is held on a tenure which, although not protected as aforesaid, is admitted by all the recorded proprietors of the estate to be a permanent tenure created by all the proprietors of the estate, subject only to the payment of an amount of rent fixed in perpetuity, and of such nature that the rent thereof is not liable to be enhanced under any circumstances by the proprietors of the said estate, or any person deriving his title from such proprietors, the rent payable by the holder of such tenure (whether he be known as talukdar, patnidar, mukarraridar, or by any other designation) shall be deemed to be the rental of such land.

Exception 4.—If any land be unoccupied, such amount as the Collector may determine, with reference to all the circumstances of the case, shall be deemed to be the rental of such land.

PART II.

Of the Right to claim Partition.

Who entitled to claim partition.

8. Except as hereinafter otherwise provided, every recorded proprietor of a joint-undivided estate, who is in actual possession of the interest in respect of which he is so recorded, is entitled to claim a partition of the said estate, and the separation therefrom and assignment to him as a separate estate of lands representing the interest of which he is in such possession; provided that, and as far only as such partition, separation, and assignment can be made in accordance with the provisions of this Act.

Any two or more such recorded proprietors may claim that lands representing the interests of all such claimants may be formed into one separate estate, to be held by them as a joint undivided estate; and every provision of this Act which applies to an applicant for partition shall apply to any two or more persons making such joint claim.

Note 1.—The Partition Act clearly contemplates more than the mere record of the fact of possession on the part of an applicant for partition. He must be in actual possession of the interest in respect of which he is so recorded. If the fact of registration in the Collector's books were by itself to be accepted as sufficient evidence of possession to entitle an applicant to claim partition, it would have been unnecessary for the law to declare (as it does) that partition may be claimed by a recorded proprietor who is in actual possession of the interest in respect of which he is so recorded. (Board's Proceedings of 15th January 1887, No. 106. Collection 7, File 4.)

Note 2.—In the year 1226F (1819) a fourteen-anna eight-gundas share of a certain mouzah was permanently settled. The remaining one-anna twelve-gundas share was permanently settled in 1861. This share was sold for arrears of Government revenue in 1873, and purchased by the plaintiff, who subsequently applied to the Collector for partition under the Butwarra Act. The Collector refused to partition upon the ground that the Act was not applicable to the partition of a mouzah held jointly by the proprietors of two separate estates. The plaintiff then brought the present suit, to which he made the Collector a party, to obtain a declaration that he was entitled to have his share separated from the fourteen-anna eight-gundas share by metes and bounds, and also for a decree directing a partition of the whole mouzah into two parts.

Held, that so far as the plaintiff on the one hand and the owners of the fourteen-anna eight-gundas share on the other, were concerned, the mouzah could be partitioned, but that such partition would not be binding upon the Government unless by consent.

(Ajoodhya Persad *versus* Collector of Durbhunga, IX, I. L. R., Calc., page 419).

Note 3.—In 1851 an estate was brought under butwarra under the provisions of Regulation XIX of 1814. At such butwarra a portion of the estate being land covered with water and unfit for cultivation was not divided, but left joint amongst all the co-sharers, the land revenue payable on account of the whole estate being apportioned amongst the several estates into which the portion divided was split up. Subsequently, on the portion remaining joint becoming dry and

fit for cultivation, an application was made by one of the co-sharers to the Collector to partition the same under the provisions of Bengal Act VIII of 1876, but that officer refused to do so, on the ground that the land "did not bear an assessed revenue and was not shown in the towji."

In a suit brought under the above circumstances to compel the Collector to make the partition, and in the alternative to have it made by the Civil Court, *Held*, that, though the reason given by the Collector for refusing was an erroneous one, he was not bound to make the partition under the provisions of Bengal Act VIII of 1876, as the land in suit was not liable for the payment of one and the same demand of land revenue, and was therefore not a joint undivided estate within the terms of section 4, clause (9) of that Act.

Held, also, that the word "estate," as used in section 265 of the Civil Procedure Code, must not be construed in the same limited and defective sense in which it is used in Act VIII of 1876, but must be taken to be there used in its ordinary signification, and that consequently the plaintiff was entitled to a decree for partition under the provisions of that section. Chunder Nath Nundy, *versus* Hur Naraïn Deb (1) approved. (The Secretary of State for India in Council *versus* Nundun Lall, X, I. L. R., Cal., page 435).

Partition according to interest.

9. (*a*) If the interest of any recorded proprietor who is entitled to claim partition as aforesaid is an undivided share in an estate held in common tenancy, such person shall be entitled to have assigned to him as his separate estate lands of which the assets shall bear the same proportion to the assets of the parent estate as his undivided share in the parent estate bears to the entire parent estate.

(*b*) If the interest of such recorded proprietor is the proprietary right of certain specific mouzahs or lands forming part of the parent estate, and held by him in severalty, he shall be entitled to have assigned to him as his separate estate the said mouzahs or lands.

(*c*) If the interest of such recorded proprietor consists of an undivided share held in common tenancy in certain specific mouzahs or tracts forming part of the parent estate, but not extending over the whole area of the parent estate, he shall be entitled to have assigned to him as his separate estate lands situated within such specific mouzahs or tracts, of which the assets shall bear the same proportion to the assets of such specific mouzahs or tracts as his undivided share in such specific mouzahs or tracts bears to the entire mouzahs or tracts

Provided that, if the interest of such recorded proprietor consists of such undivided share in more than one mouzah or tract, he shall not be entitled to have lands assigned to him in every such mouzah or tract, but the Collector may assign to him as his separate estate lands situated in any one or more of the said mouzahs or tracts, provided that the assets of such lands are in proportion to the aggregate of the interests which he holds in all such mouzahs or tracts.

(*d*) If such recorded proprietor holds in the parent estate more than one of the kinds of interest specified in this section, lands shall be assigned to him as far as possible in accordance with the principles above laid down.

NOTE TO CLAUSE (*c*).—In the case of an estate made up of lands or shares in five different mouzahs, application for butwarra having been made by the recorded proprietor of a share in the share of one of the mouzahs, and objection having been taken thereto, it was held by the Board that an interest in one of the five mouzahs, consisting of an undivided share in the mouzah which was held jointly with the proprietors of four other estates, did not come under this clause. As the basis of all partition proceedings is the division of the lands which are

borne on the Collector's rent-roll as liable for the payment of one and the same demand of land revenue, it was held that by reason of the existence of such an interest as that above described (viz., in a mouzah held jointly with estates other than the estate under partition) no partition was feasible. (Board's Proceedings of 20th February 1886, No. 97, Collection 2, File 630.)

Life estate.

10. Notwithstanding anything hereinbefore contained, no person having a proprietary interest in an estate for the term of his life only shall be deemed to be a person entitled to claim partition under this Act.

NOTE 1.—In a case the Collector rejected the application of a Hindu widow for the partition of her share in a joint undivided estate on the ground, among others, that as she held a proprietory interest in the estate for the term of her life only, she was debarred under the provisions of section 10 of the Act from claiming a partition of her share

On the widow's appeal against the Collector's orders, the Commissioner held that the proper course to pursue in the case was to give the reversionary heirs permission to join with the widow in the petition for partition. He then went on to discuss the question who were the reversionary heirs, and having decided that they were the daughters and daughter's children of the widow, and not the brothers and nephews of her deceased husband, he returned the case to the Collector with directions to proceed with the partition if the reversionary heirs joined in the application. The Board were of opinion that the orders issued by the Commissioner were erroneous and must be set aside. They observed:—"The terms of section 10 of the Act which disqualify any person having a proprietory interest in an estate for the term of his life only, from claiming a partition are absolute. Apart also from the fact that the revenue courts have no jurisdiction to enquire into or determine questions of right or inheritance, it is to be observed that the only persons who can claim a partition, or who can be recognized by the revenue courts, are registered proprietors who are in actual possession."

The appeal was accordingly decreed, and the orders originally passed by the Collector rejecting the application for partition were confirmed. (Board's Proceedings of 30th July 1881, No. 201, Colln. 1576, File I.)

NOTE 2.—A Hindu widow who has succeeded to a share in a revenue-paying estate as heir to her deceased husband is not a person having a proprietory interest in an estate for the term of her life only, within the meaning of section 10, Bengal Act VIII of 1876. Even if she were, a civil court would not be debarred from decreeing partition of a revenue-paying estate at her instance if a proper case for the passing of such a decree be made out by her.

(Mohadeo Kooer *versus* Haruck Narain and others, IX, I. L. R., Calc., page 244.)

NOTE 3.—A Hindu widow and a recorded share-holder of an estate having an adopted son applied to have her share of the estate partitioned off. The application to the Collector was opposed by one of the co-proprietors of the estate on the ground that her interest in the estate was one for life only, and that therefore under section 10 of the Act she was not entitled to claim a partition. The Collector held that with reference to the opinion expressed by the High Court in the case of Mohadeo *versus* Haruck Narain (IX, I. L. R., Calc., page 244), the widow was bound to establish in a civil court exceptional circumstances justifying her application for partition. The Commissioner on appeal remanded the case with instructions that the partition should be allowed to proceed if the adopted son of the widow was of age and of sound mind, and there was no reasonable objection on his part. The Commissioner subsequently stopped the partition proceedings. The adopted son having given his consent, it was eventually held by the Board on appeal that as the name of the applicant was recorded in the Collector's register in respect of her share for the partition of which she claimed, and as her possession was not disputed and the interests of the heir presumptive were according to the terms of the decision of the High Court not injuriously affected by an order for partition, the appellant Hindu widow was entitled to the partition she claimed. (Board's Proceedings of 19th March 1886, No. 112, Collection 9, File 132.)

No partition of a permanently-settled estate allowed if separate estate liable for less than one rupee annual land revenue until proprietor agrees to redeem.

11. No application for the partition of a permanently-settled estate shall be admitted, and if the application shall have been admitted, no partition shall be carried out in accordance with such application, if the separate estate of any of the proprietors would be liable for an annual amount of land revenue not exceeding one rupee, until the proprietor of such separate estate agrees to redeem the amount of revenue for which his estate would be liable, by payment of such sum as the Lieutenant-Governor may fix with reference to the circumstances of such estate.

NOTE 1.—The provisions of this section were held not to apply to partition proceedings which were pending at the time of the commencement of this Act and were carried out under Regulation XIX of 1814 under section 2 of this Act, no notice having been given under section 3 of this Act to bring the partition under its provisions. It was ruled that the shareholders could not be compelled to redeem their shares of the Government revenue. (Board's Proceedings of 25th January 1879, No. 27, Collection 5, File 38, and of 19th March 1881, No. 126, Collection 5, File 599).

NOTE 2.—Under this section no partition is to be allowed if the separate estate of any of the proprietors would be liable for a Government revenue of one rupee or less; and under the interpretation clause (3—XVI) of the Act, a separate estate is explained to mean any distinct estate which may be formed by partition.

No partition, then, can be allowed if the share of any of the applicants for partition would be liable to pay revenue of one rupee or less, or if the *ijmali* share of the estate belonging to proprietors who had not applied for partition were similarly circumstanced. There would be no obstacle to a partition if the several individual proprietors of an *ijmali* share were each of them possessors of an interest representing a jumma of less than one rupee, provided that the whole aggregate of the *ijmali* share were liable to pay a revenue of more than one rupee What remains as the *ijmali* share of the proprietors who have not applied for partition is a separate estate under the meaning of the Act.

A larger shareholder cannot be allowed to redeem the revenue of smaller shareholders without their consent. No such procedure is contemplated by the law. (Board's Proceedings of 17th September 1881, No. 211, Collection 1, File 1648, and of 27th June 1885, No. 187, Collection 5, File 362.)

Partition of an estate in which private division has been made not to be made, except on joint petition of proprietors or on order of Civil Court.

12. Whenever a division of the lands of any estate has been made by private arrangement of the proprietors thereof, and in accordance with such arrangement each proprietor is in possession of separate lands held in severalty as representing his interest in the estate, no such estate shall be brought under partition, and no partition of such estate shall be made under this Act otherwise than on a joint petition presented under section one hundred and one or section one hundred and five by all the proprietors thereof, unless such partition shall have been ordered to be made by a Civil Court.

NOTE 1.—An estate was brought under partition by an application of some of its proprietors. The proprietors of another share objected that, there having been a previous private partition, the butwarra in progress was inadmissible under section 12. The Deputy Collector who held a local enquiry found that the proprietors were in separate possession of specific lands, and that the partition could not proceed. This view was upheld by the Collector, but the decision was reversed by the Commissioner in appeal. On the hearing of the appeal before the Board, it was urged that separate possession was alone sufficient to prove the existence of a private arrangement. But the Board could not accept this view.

They observed that what the law contemplated was a formal arrangement, agreed to by all the parties concerned, and followed by separate possession in accordance with the arrangement, and that the law very justly declared that when such an arrangement had been made the parties should not be permitted to resile from it. They further observed that it would be unjust that a proprietor, who had received specific lands under such an arrangement, and had allowed such lands to fall out of cultivation or otherwise to deteriorate, should be permitted to claim an interest in lands which had been improved by the good husbandry of his fellow-proprietors. The Board held that in such a case the first step would be to establish the existence of an agreement, and that although some of the proprietors might have entered into an informal understanding among themselves to occupy certain lands and not occupy others, yet when the owners of other shares were not parties to the arrangement, and had not in any way recognized it, the partition was not barred by such an arrangement. (Board's Proceedings of 8th July 1882, No. 86, Collection 7, File 2123).

NOTE 2.—A partition can only be demanded, as of right, when each of the separate shares is made liable for an amount of Government revenue in proportion to its assets as compared with those of the undivided estate. When a private arrangement has been made among the proprietors, by which certain lands have been made liable for an amount of Government revenue not bearing the same proportion to the assets of such lands as the Government revenue of the entire estate bears to the assets of the whole estate, a partition may still be made if all the proprietors agree to it, and if the Collector is satisfied that the Government revenue is sufficiently secured. But no such partition can be made except on the joint application of all the recorded proprietors, and unless the Collector is fully satisfied that the interests of Government will not be endangered (Board's Proceedings of 30th September 1882, No. 334, Collection 7, File 20.)

NOTE 3.—Certain proprietors representing altogether a nine-annas share in an estate applied for a partition of their shares. Subsequently, the owners of a two-annas share also applied to have their share separately assessed and demarcated. Their applications were opposed on the ground that a private partition of the estate having been previously made in the year 1226 Fusli, the present partition could not be made with reference to the provisions of the present butwarra law. The Deputy Collector in immediate charge of butwarra proceedings considered that the division of 1226 was a bar to further proceedings. The Collector took the opposite view. The Commissioner on appeal held that a private butwarra had undoubtedly taken place, but he admitted the force of the technical objections raised on behalf of the respondents that, as a portion of the lands, viz., some 17 bighas were held ijmali, and as the several shareholders under the private partition were not in separate possession of the entire lands representing their interests, the private partition was, with reference to the terms of section 12, no bar to the proceedings, and he in consequence confirmed the Collector's order allowing the butwarra to proceed. On appeal the Board upheld the Commissioner's order. They held that, though the butwarra of sixty years before into two 8-annas shares had taken place, it had clearly been superseded by some subsequent arrangement under which the proprietors were in possession, and admittedly holding shares representing 9, 2, 5 annas. Under these circumstances, it could not be said in the terms of this section that the private arrangement of 1226 Fusli was in force. They, however, did not attach much weight to the objections raised regarding the 17 bighas of land which were admittedly always held ijmali, as, for special reasons, tanks and other special plots of land are frequently retained ijmali. (Board's Proceedings of 30th December 1882, No. 140, Collection 1, File 1996).

NOTE 4.—The private partition of an estate, such as that contemplated by this section, having take place, it was held to be binding on the purchaser of a portion of one of such separated estates, as he must have been well aware at the time of his purchase of the existence of a private partition between his vendor and other co-proprietors. He could not therefore claim a partition under this Act. (Board's Proceedings of 30th January 1886, No. 58, Collection 1, File 67).

NOTE 5.—The wording of this section shows that it contemplates the objection being taken before an estate has been brought under partition, *i.e.*, before the proceeding referred to in section 31 has been recorded. (Board's Proceedings of 6th March 1886, No. 153, Collection 5, File 294.)

NOTE 6.—The private partition contemplated in this section is one of the entire estate, and not merely of one village out of several. A division of only one village out of several, however complete the arrangement, would in no way operate as a bar to partition. (Board's Proceedings of 13th March 1886, No. 98, Collection 7, File 91).

NOTE 7.—The Board have on more than one occasion held that the partition referred to in this section as sufficient to bar proceedings for a butwarra under this Act must be of the most complete and formal description, that there must be a distinct demarcation of the lands of each recorded proprietor, and that, as required by the section itself, clear evidence must be forthcoming to show that each proprietor of the estate is in possession of lands severally representing his interest in the estate. (Board's Proceedings of 13th March 1886, No. 205, Collection 7, File 35).

NOTE 8.—An estate A consisted of two entire villages and a half share of another village B, the other half belonging to two other estates, C and D. The lands of the half share of B in estate A were demarcated by the survey from the half share of B belonging to the two other estates C and D. The proprietor of a seven-annas share in the half of the village B only of the estate applied for the partition of his share. The proprietor of the remaining one-anna objected that the partition could not proceed, inasmuch as by a private arrangement he was in separate possession of certain specific lands, and inasmuch as the jungle lands were held in common between the three estates. In appeal the Board observed that although it might be shown that the objector held a defined area of some 200 bigahs, and there might be complete evidence of separate holding of this portion of the estate, yet this did not bring the case within section 12 :—"The separate possession in severalty of one proprietor will not suffice : it is necessary that each proprietor should hold his lands in this manner, and moreover it has been more than once ruled by the Board that separate possession must be one by metes and bounds, each proprietor's share being clearly and fully defined. The case would seem to be one in which the terms of section 106 would apply." Thus they held that the private arrangement in this case was not such as was contemplated in this section, and that this section was no bar to the partition proceedings. (Board's Proceedings of 1st May 1886, No. 160, Collection 7, File 262).

NOTE 9.—An estate was at first privately divided in two equal shares. After some years it was privately divided into six equal shares. After several years it was held by no less than 28 recorded proprietors. One of them having a one-anna interest applied for partition, and an objection was preferred that there had been a private partition which under this section would be a bar to a partition under this Act. The Board held that the circumstances having changed from the time of the original private partition, and even from the second, when there were six equal shares, the partition could proceed. It was clear, the Board held, that the division into six puttees did not represent the existing state of things on the property, and that it could not be said that, in accordance with this division, each of the present proprietors was in possession of separate lands representing his interest in the estate. (Board's Proceedings of 29th May 1886, No. 276, Collection, 7, File 472).

NOTE 10.—In an estate a partition of which was applied for under this Act, there had been a private partition of the lands, leaving 68 bighas held in ijmali tenure. The case having come up to the Board in appeal, they observed that "as the Commissioner has rightly remarked, section 12 contemplates the division of all the lands of an estate, and separate possession of each proprietor or set of proprietors of lands representing their full interest in the estate. The exclusion of the 68 bighas is therefore fatal to the claim of a private partition having been effected" (Board's Proceedings of 4th September 1886, No. 46, Collection 7, File 197.)

Under certain circumstances Collector may refuse to declare lands held in severalty to be a separate estate.

13. The Collector may refuse to admit an application for the formation of lands held in severalty into a separate estate; if, in consequence of such lands being intermingled with those held by other proprietors, the result of the partition would be to form out of a compact estate one or more estates

consisting of scattered parcels of land in such a way as, in the opinion of the Collector, to endanger the safety of the land revenue, and the Collector may at any time refuse to proceed with a partition which would have such a result.

But a partition may be allowed in such a case if the recorded proprietors shall agree to such a distribution of land as shall make the estates formed by the partition reasonably compact.

Nothing in this section shall be understood to prohibit the partition into separate estates of a parent estate which before such partition is not compact and consists only of scattered parcels of land.

Interest alienated with special condition as to revenue liability.

14. No proprietor who has alienated any portion of his interest in an estate, or in any specific lands of an estate, by private contract, with the condition that the transferee shall be liable in respect of the interest acquired by him to pay a specified amount or a specified share of the land revenue for which the estate is liable (such amount or share being other than the proportionate amount or the proportionate share for which such transferred interest if formed into a separate estate would be liable under the provisions of section six);

and no proprietor who has derived his title from any proprietor who has made any alienation as aforesaid,

shall be entitled to claim a separation under this Act of the interest which he continues to hold in the estate;

and no such transferee as aforesaid, and no person deriving his title from such transferee, shall be entitled to claim a separation of the interest which has been so acquired;

Provided that a separation of such interests may be made, if the parties concerned agree to waive the conditions of the contract as regards the proportion of revenue for which the transferor and transferee or their representatives respectively are liable, and to hold the estates which may be allotted to them respectively by the partition, subject to the payment of such amount of land revenue as may be assessed upon them respectively by the revenue authorities under this Act.

NOTE.—A certain share in an estate was sold, reserving certain rent-free and homestead lands. The purchaser, however, was made liable by the deed of sale for the revenue of the purchased share: by this was meant, not the revenue proportionate to the amount of land actually sold, but the revenue proportionate to the share in the estate that was sold. The Board, agreeing with the Commissioner, held that under this section the partition could not proceed. (Board's Proceedings of 20th February 1886, No. 61, Collection 5, File 293.)

Arrears of revenue may be realised by sale of parent estate.

15. Notwithstanding that a parent estate may have been declared to be under partition as provided in section thirty-one, any arrears of revenue accruing due on such estate before the date specified in the notice issued under section one hundred and twenty-three may be realised by sale of the parent estate as if such estate had not been declared to be under partition; and if such sale takes place, the partition proceedings shall cease from the date thereof.

Shares may be protected from liability for arrears under laws in force.

16. Nothing contained in the last preceding section shall be deemed to affect the provisions of sections 10, 11, 12, 13, or 14 of Act XI of 1859 (*an Act to improve the law relating to sales of lands for arrears of revenue*), or any provisions of any similar law

for the time being in force in respect to the opening of separate accounts for different shares in an estate, and the protection afforded to such shares thereby.

Provided that, if any share in any estate is sold for its own arrears of revenue while such estate is under partition in accordance with the provisions of this Act, such share shall be sold subject to the partition proceedings, which shall proceed as if no such sale had taken place; and the purchaser of the share sold may, from the date of such sale, exercise all the rights which the proprietor whose share he has purchased might have exercised, and shall be subject to all the liabilities to which such proprietor would have been subject in respect of the partition proceedings.

PART III.

OF THE APPLICATION FOR THE PARTITION; THE ADMISSION OF AN ESTATE TO PARTITION; AND THE DISCONTINUANCE OF THE PARTITION PROCEEDINGS AFTER SUCH ADMISSION.

Application for partition to be made to Collector of the district.

17. All applications for partition shall be made to the Collector of the district on the revenue-roll of which the estate is borne, and shall be made in person, or by duly authorised agent, on paper bearing such stamp as may be required by any law for the time being in force.

NOTE 1.—Revenue-paying estates must be partitioned by the Collector. They cannot be partitioned by metes and bounds by the Civil Court Ameen; and if the shares in such an estate are not separate estates, but are mere fractional shares of integral estates, they cannot be partitioned in the absence of the other co-sharers. (Damooder Misser and another *versus* Sennabutty Misrain and others, VIII, I. L. R., Calc. 537.)

NOTE 2.—Partition of an estate paying-revenue to Government cannot be effected in a civil court. (Badri Roy and another *versus* Bhugwat Narain Dobey and others, VIII, I. L. R., Calc. 649.)

Application to be signed, and certain particulars specified.

18. The application shall be signed by the applicant, and shall supply the following information in regard to the parent estate, so far as the particulars are known to the applicant or can be ascertained by him:—

(*a*) name of the estate;

(*b*) number under which the estate is borne on the revenue-roll, and the revenue demand for which it is liable;

(*c*) number under which the estate is borne on the Collector's General Register of revenue-paying lands;

(*d*) name and address of every proprietor, whether recorded or unrecorded;

(*e*) the character and extent of the interest of which each proprietor is in possession;

(*f*) a specification of any lands held by all or any of the proprietors of the parent estate in common with all or any of the proprietors of other estates, and of the rights of such proprietors respectively in such lands.

Application must be accompanied by copy of rent-roll and statement of rents.

19. Subject to the provisions of section sixty-one, every application shall, if possible, be accompanied by a copy of the rent-roll of the estate, by a statement of the rents collected from such estate on behalf of the applicant during each of the three years immediately preceding such application, and by copies of any measurement papers of the estate which the applicant may have in his possession.

The said rent-roll, statement and measurement papers shall be attested by the patwaris of the villages, if any, and every such application, rent-roll, and statement shall be presented, subscribed, and verified as provided in section fifty-two.

If the applicant is unable to produce a rent-roll or statement as above required, he shall state the reason of such inability, and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll and statement, and the Collector may, if he shall think fit, require such person to produce such rent-roll and statement.

Collector may reject application.

20. If the application does not fulfil the requirements of the three last preceding sections, the Collector may reject such application or may order it to be amended.

Procedure of Collector on receipt of application.

21. If in the opinion of the Collector the application fulfils the said requirements, and there appears to be no objection to making the partition, the Collector shall publish a notification of the application in the manner prescribed in section one hundred and thirty-four, and shall also cause copies thereof to be posted up at the Court of the Judge of the district, at the court of every Munsif and Sub-divisional Officer within whose jurisdiction, and at every police-station within the jurisdiction of which any lands appertaining to the estate are known to be situated, and shall invite any person claiming any proprietary right in the estate, who may object to the partition, to state his objection either in person, or by duly authorised agent, on a day to be specified in the notification, not being less than thirty or more than sixty days from the date of the publication of the notification on the estate.

Notice to proprietors who have not joined therein.

22. Notice of the application shall also be served in the manner prescribed by section one hundred and thirty-five on such of the recorded proprietors of the estate as shall not have joined in the application, and on any other proprietor who may have been named in the application.

In case of valid objection being made within time allowed, application may be refused.

23. If any objection be made to the partition by any person claiming a proprietary right as aforesaid on or before the day specified in the notification published under section twenty-one, or at any subsequent time if it shall seem fit to the Collector to admit such objection, and the Collector, on consideration of such objection, shall be of opinion that there is good and sufficient reason for rejecting the application, he may reject the same, and in that case shall record the grounds of such rejection.

NOTE.—Patadars cannot be considered as persons claiming a proprietary right who are entitled to object under this section, but a recorded part-proprietor of a mouzah, a portion of which mouzah also formed a part of the estate under butwarra, so that the name of such proprietor would be entered in the application under section 18 (*f*), was held to be entitled to object. (Board's Proceedings of 20th February 1886, No. 97, Collection 2, File 630.)

Procedure when objection raises any question of title or right.

24. If the objection raises any question of the extent of interest or of right or title as between any applicant and any other person claiming to be a proprietor of the parent estate, and if it shall appear to the Collector that such question has not been already determined by a Court of competent jurisdiction, the Collector may hold such inquiry as he may deem necessary into the objection, and, if he be satisfied that the applicant is in possession of the extent of the interest for the separation of which he has applied, may, instead of rejecting the application as provided in the last preceding section,

(*a*) direct that the partition proceedings shall proceed for the purpose of forming and assigning to the applicant a separate estate in accordance with the extent of interest claimed by him in the parent estate; or

(*b*) direct that such proceedings be postponed for four months.

When Collector to resume proceedings.

25. At the expiration of the said four months, the Collector shall resume the proceedings, unless the person who has made the objection, or some other person, shall have obtained an order from a Civil Court directing that such proceedings be stayed, or shall be able to show that a suit has been instituted before such Court to try some question, of such nature that the Collector shall think fit to stay the proceedings until the question shall have been finally decided, or until the proceedings in such Court in respect thereof shall have terminated.

Suit in Civil Court when not to affect proceedings taken under this Act.

26. No suit instituted in a Civil Court by any person claiming any right or title in the parent estate, after the lapse of four months from the issue of an order of the Collector under clauses (*a*) and (*b*) of section twenty-four, or after the lapse of four months from the issue of an order of the Collector under section thirty-one declaring the estate to be under partition, shall avail to stay or affect the progress of any proceedings which shall have been taken under this Act for the partition of an estate; and all rights which may be conferred on any person by the final decree in such suit shall be subject to such proceedings in the manner hereinafter provided.

Decree made while partition proceedings are in progress.

27. Every decree passed in such suit after the parent estate shall have been declared to be under partition as provided in section thirty-one, but before the date specified in the notice under section one hundred and twenty-three, shall be made in recognition of the proceedings then in progress under this Act for the partition of such parent estate, and shall be framed in such manner that the provisions of such decree may be applied to, and may be carried out in reference to, the separate estate which the Collector in his proceeding under section thirty-one shall have ordered to be formed out of the parent estate;

and if the effect of any such decree be to declare any person or body of persons entitled to any extent of interest in such parent estate in excess of the extent of interest which the Collector in the said proceeding has declared to be held by such person or body of persons, such decree shall specify, separately in respect of every proprietor or body of proprietors of whose interests the Collector has separately specified the extent in the said proceeding, the proportion of such excess which such person or body of persons is entitled to recover from every such proprietor or body of proprietors;

and every person or body of persons so declared entitled to recover any extent of interest from any such proprietor or body of proprietors shall, for the purposes of the partition proceedings, be deemed to have the same rights, and to be subject to the same liabilities, as a person who has acquired such extent of interest from such proprietor or body of proprietors by private purchase after the estate was brought under partition under section thirty-one, and on the date on which the decree was passed;

and such person or body of persons may apply, as in this Act provided, for the separation and assignment to him, or them, of the lands representing the extent of interest so acquired;

and such application shall be dealt with as provided in section thirty-two.

Decree made after partition proceedings completed.

28. Every decree passed after the date specified in the notice under section one hundred and twenty-three in a suit which was instituted as mentioned in section twenty-six, shall be made in recognition of the partition proceedings, and shall be framed in such manner as to give effect to such division of the parent estate into separate estates as shall have been made by the Collector, and not to disturb such division; and if the effect of any such decree shall be to declare any person or body of persons to have been entitled to any extent of interest in the parent estate in excess of the extent of interest which is represented by the separate estate assigned to such person or body of persons by the Collector in the partition proceedings, such decree shall specify, separately in respect of the proprietor or joint proprietors of every separate estate formed by the partition, the proportion of such excess of interest which such person or body of persons is entitled to recover from such proprietor or joint proprietors; and every person or body of persons so declared entitled to recover any extent of interest from the proprietor or joint proprietors of a separate estate shall be entitled to recover such extent of interest out of the separate estate which has been assigned to such proprietor or joint proprietors, and out of such separate estate only;

and every such decree as aforesaid shall be executed by placing the person or persons so declared entitled to recover in the position of a recorded joint proprietor or recorded joint proprietors of such separate estate, holding the same as a joint undivided estate in common tenancy with the proprietor or joint proprietors to whom such separate estate was assigned by the Collector in the partition proceedings, the extent of the interest of the joint proprietors respectively in such estate being such as is declared in the aforesaid decree.

Civil Court may order partition.

29. Subject to the provisions of section eleven, a Civil Court may at any time direct the Collector to assign to any person lands representing a specified interest in any estate, or in any specified village or tract of land in an estate to be held by such person as a separate estate, or to divide off from any estate any specified villages or lands, and to assign them to any person to be held as a separate estate, provided that an application for such partition and separation shall be presented by such person as required by sections seventeen, eighteen, and nineteen; but no Civil Court shall in any case specify the amount of revenue for which any separate estate which it may direct to be formed under the provisions of this section shall be liable.

Collector to assess land revenue in accordance with this Act.

30. The Collector shall assess the land revenue on every such separate estate in accordance with the provisions of this Act, and no Civil Court shall direct the Collector to carry out a partition otherwise than in accordance with the provisions of this Act.

Collector may declare the estate to be under partition.

31. If no objection be made within the time allowed under section twenty-one to an application for partition, or when all objections have been disposed of, and if the Collector has no reason to believe that any obstacle exists to his making the partition as applied for, he shall direct that the application be admitted, and record a proceeding declaring the estate to be under partition, for the purpose of forming and assigning to the applicant a separate estate.

In such proceeding the Collector shall declare the extent of interest in the parent estate which he finds to be held by the applicant or joint applicants;

and, if more than one separate application for separation shall have been made and admitted, the extent of interest which he finds to be held by every separate applicant or body of joint applicants respectively;

and also the extent of interest which remains to any recorded proprietor, or to any number of recorded proprietors who are not applicants;

and shall order that lands proportionate to the interest so declared to be held by each applicant, or body of joint applicants respectively, shall be formed into a separate estate, to be assigned to such applicant or body of joint applicants;

and that lands proportionate to the interest so declared to remain to the recorded proprietor, or the number of recorded proprietors who are not applicants, shall be left forming a separate estate.

Subsequent application for separation of another share.

32. If at any time after the Collector has made an order for partition under the last preceding section, any recorded proprietor in the estate, other than the original applicant, shall apply for the separation of his share, the Collector may either order that the proceedings for effecting such separation shall be carried on simultaneously with those for separating the share of the original applicant, or, if he consider that such a course would entail delay in the completion of the original proceedings, he may order that no action shall be taken on such subse-

"NOTE.—Partitions made under the latter part of Section 32 must be treated in all respects other than those specified in Section 32, as new partitions, and fresh applications under Section 17 are necessary." 5-1-95.

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"NOTE.—*Appeal of Narsing Narayan Singh.*—Respondent purchased a proprietor's share in an estate after the partition proceedings had been begun, and made an application to the Collector after the proceedings had been completed and submitted to the latter for approval under section 80 of the Act, raising objections which the vendors had not raised in the earlier stages of the proceedings.

This was rejected by the Collector; on appeal, the Commissioner passed an order which in effect set aside the general arrangements under section 75.

Held by the Board that the Commissioner's order was *ultra vires.* Under section 32 the application must be made while the partition proceedings are actually in progress, and not after they have been brought to a close, except as regards the final sanction; and that section 120 of the Act only enabled a Commissioner to return the partition proceedings for the correction of some obvious substantial error of detail, which error must be an ascertained one, the mode of amendment being indicated (Board's proceedings of 26th September 1896, No. 488C, Collection No. 7, File No. 14 of 1896)." 2-11-96.

quent application until after the proceedings for the separation of the original applicant's share shall have been completed.

In the latter case all or any of the rent-rolls, measurements, and other papers which were used in the separation of the original applicant's share, may be used, as far as they are applicable, in the partition for which subsequent application has been made.

Collector may refer application for partition to any Deputy Collector.

33. The Collector may refer any application for partition to a Deputy Collector for the purpose of making any inquiries and doing anything required by this Part; provided that every order—

(*a*) rejecting an application under section twenty-three;

(*b*) directing, under section twenty-four, that the partition shall proceed, or shall be postponed;

(*c*) directing, under section thirty-one, that an application for partition be admitted, and declaring an estate to be under partition;

(*d*) made under the first clause of the last preceding section;

(*e*) appointing a Deputy Collector under the next succeeding section to carry out the partition;

shall be passed by the Collector and not by any Deputy Collector.

As soon as estate declared to be under partition, Collector may appoint Deputy Collector.

34. As soon as the Collector has declared an estate to be under partition as provided in section thirty-one, he may appoint a Deputy Collector to carry out the partition, and all or any of the proceedings necessary thereto.

Partition may be stayed if parties so desire. Recovery of costs.

35. If at any time after an order shall have been passed for making a partition, all the recorded proprietors of the estate shall present a petition to the effect that they do not wish the partition to proceed, the Collector may, on the report of the Deputy Collector or otherwise, strike the partition case off the file, on payment by the proprietors of all costs and expenses incurred in and about such partition; and any such costs and expenses which shall not already have been levied as provided in section thirty-nine or section forty, shall be levied in proportion to the shares of the respective proprietors.

NOTE.—From this section it is clear that a partition case can only be struck off the file by a Collector on a petition from all the recorded proprietors that they do not wish the partition to proceed. The power which is reserved to a Commissioner under section 36 to quash a partition must be exercised at the Commissioner's discretion with reference to the circumstances of each case. (Board's Proceedings of 17th September 1881, Collection 1, File 1648.)

Partition may be stayed and proceedings quashed by Commissioner.

36. If at any time after an order shall have been passed for making a partition, it shall appear from information which was not before the Collector at the time the partition was ordered or otherwise, that any sufficient reason exists why the partition should not be proceeded with, the Commissioner may, on the report of the Collector or otherwise, after issuing a notice calling on the persons interested to show cause why the partition should not be struck off the file, and after considering any objections which may be made, order the partition case to be struck off the file; and in such case any costs and expenses of the partition which shall not already have been levied as provided

in section thirty-nine or section forty shall be levied in proportion to the shares of the respective proprietors.

NOTE 1.—When an estate was entered under one number and one sudder jumma in the Government rent-roll, and the two mouzahs of the estate were jointly liable for the Government revenue, it was held that there was no legal obstacle to the application of the owner of an eight annas share in one of the mouzahs for a butwarra of his share, and that the whole estate must be considered liable to measurement and assessment under the butwarra proceedings. It was added—"The identity of the separate villages must be considered as having become merged at the time of the permanent settlement in the common responsibility which they jointly share for the Government revenue of the entire estate. A butwarra can only be effected under section 6 of the Partition Act, and the separate and distinct manner in which the two mouzahs have been held by perfectly distinct proprietors offers no legal disability in the way of the completion of the butwarra." Whatever the early history of the mouzahs might have been (with regard to separate engagements), the fact to be regarded was that at the time of the butwarra they constituted a joint and undivided estate. The Board therefore reversed the Commissioner's order that the case should be dealt with under section 36. (Board's Proceedings of 8th November 1884, No. 248, Collection 1, File 247.)

NOTE 2.—A partition case cannot be struck off the file under section 116 without issuing a notice under this section. (Board's Proceedings of 14th March 1885, No. 399, Collection 5, File 1672.)

NOTE 3.—In the event of legislation being undertaken, it has been reserved for consideration whether the powers vested in Commissioners under this section and section 40 should not be transferred to Collectors, subject to the safeguard that an appeal shall in each instance lie to the Commissioner (Board's proceedings of 19th May 1888, No. 230, Collection No. 7, File No. 420).

PART IV.

OF ESTABLISHMENTS FOR EFFECTING PARTITIONS AND OF THE COST THEREOF.

Deputy Collector may appoint officers for making measurement of lands, &c.

37. For the purposes of this Act, the Deputy Collector may, with the approval of the Collector, and subject to any rules made in that behalf by the Board, appoint such establishments as may be required for making the measurement and survey of lands for ascertaining and recording the rates of rent, for making any other local inquiries, for the preparation of the papers, and for other matters in each case; and the Collector may appoint such peshkars or other superior officers as may be required to test the work of the amins and for the performance of similar duties; provided that the scale of remuneration of such officers, and the time for which they shall be employed, shall be sanctioned by the Commissioner.

Special establishments may be appointed.

38. In any district or division in which partitions may be so numerous or so extensive as to render necessary the appointment of special establishments in the office of the Collector or of the Commissioner, the Collector and the Commissioner may, with the sanction of the Board, appoint such establishments.

Cost of partition to be levied from proprietors in accordance with rules laid down by the Board.

39. As soon as possible after an estate has been declared to be under partition as provided in section thirty-one, the cost of making the partition shall be estimated, and the amount shall be levied from the proprietors in such instalments and at such times during the progress of the partition as may be fixed in accordance with any rules which the Board may make in that behalf.

If the amount first estimated is found insufficient, supplementary estimates may be made from time to time, and the required amount may be levied as above provided.

Apportionment of costs.

40. The cost shall be apportioned on the proprietors of each share in proportion to their shares; but whenever it shall appear to the Commissioner that the partition proceedings have been unnecessarily delayed, and the cost of the partition enhanced by obstacles vexatiously put in the way of their completion by one or more of the proprietors, or by want of due diligence on the part of one or more of the proprietors in carrying out any requisitions made upon him or them, the Commissioner may direct that such portion of the cost as he may think proper in excess of the amount proportionate to his or their share shall be levied from such proprietor or proprietors.

NOTE 1.—As the cost of a partition is regulated, not by the Government revenue or the gross assets or the net profits, but by the area (the maximum being Rs. 36 per 100 acres), it does not seem unreasonable that the area should be made the basis of determining the proportion of costs to be paid by each of the parties. If the circumstances of an estate render it impossible to apportion the expense of the partition in accordance with area, the apportionment should be made in accordance with the amount of the Government revenue payable on account of each of the shares into which it is proposed to divide the estate. (Board's Proceedings of 13th May 1882, No. 139, Collection 8, File 963.)

NOTE 2.—See note 3 to section 36.

Deputy Collector may declare cost of local inquiry.

41. Whenever any local inquiry may be held by the Deputy Collector or any other officer, in consequence of an objection raised by any person to any record of measurements, rent-rolls, or other information which has been laid before the Deputy Collector, the Deputy Collector may declare the cost which has been incurred by such inquiry, and may direct that the entire cost so declared shall be paid by the person making the objection, or by any one of the proprietors, or that such cost shall be paid in such proportions as he shall think fit, by the said person and the proprietors or any of them, or that such cost be deemed a part of the general cost of making a partition as prescribed in section thirty-nine.

After completion of partition Collector shall declare total cost thereof.

42. Upon the completion of the partition, the Collector shall make an order declaring the total cost thereof. The account shall then be adjusted, either by returning to the proprietors any sums which they may have paid in excess of the total cost, or by levying from them in the manner provided in section one hundred and thirty-eight, if necessary, any sums remaining due.

Salary of Deputy Collectors when to be deemed part of cost of partition.

43. Whenever it shall appear to the Lieutenant-Governor that in any district the work required to be done by Deputy Collectors in connection with partitions under this Act is so great that such work would, if concentrated in the hands of one or more Deputy Collectors, fully occupy the time of such one or more Deputy Collectors, the Lieutenant-Governor may make an order directing that the salary of such one or more Deputy Collectors, as the case may be, shall be recovered from the proprietors of estates under partition in such district as part of the cost of such partitions, and thereupon such charge as the Collector may think fit to make in respect of such salary shall, in addition to the items mentioned in the last preceding section, be deemed to be a portion of the costs of every partition.

For the purposes of this section the salary of every Deputy Collector shall be deemed to be the amount of salary which is drawn by a Deputy Collector of the lowest grade.

NOTE.—If, while employed on partition work, a Deputy Collector is promoted to, or confirmed in, an appointment of which the pay is higher than that of a Deputy Collector of the lowest grade, and if his continued deputation to that work is considered necessary, the excess over the pay of a Deputy Collector of the lowest grade (Rs. 250) is to be paid by Government, and cannot be charged to the Estates' Partition Fund. (Board's Proceedings of 5th September 1885, No. 122, Collection 10, File 40.)

What are costs leviable from proprietors.

44. For the purposes of sections thirty-nine, forty, and forty-two, the costs of any partition shall be deemed to be—

(*a*) the cost of any establishments entertained for the partition under section thirty-seven, or such amount as the Collector may think proper in respect of the services of any such establishments which are entertained for the purposes of making partitions in the district;

(*b*) all contingent expenses incurred in and about the partition, and

(*c*) such portion of the cost of any establishment entertained under section thirty-eight as the Collector may order.

NOTE 1.—The cost of surveying instruments clearly comes within section 44 (*b*), as well as section 49 (*b*) of the Act, as all butwarra charges should be met by the proprietors of estates under partition, and not by Government. (Board's Proceedings of 15th March 1884, No. 150, Collection 10, File 98.)

NOTE 2.—*To clause* (*b*).—This is a very general heading, and must be held to include travelling, leave and pension allowances, as well as all ordinary contingencies. In addition to their salaries, a charge of 12 per cent. on the salaries is levied, in the shape of partition fees, from the proprietors of estates under partition to meet the liability of Government for the leave allowances and pension of the Deputy Collectors employed under section 43 (whether members of the Subordinate Executive Service or not holding substantive appointments under Government or not in service of a pensionable nature), and of such members of their establishments as hold substantive appointments under Government. (Board's Proceedings of 4th September 1886, No. 240, Collection 10, File 295, and of 29th May 1880, No. 159, Collection 10, File 767.)

Lieutenant-Governor may direct "Estates' Partition Fund" to be formed.

45. Notwithstanding anything contained in the eight last preceding sections, the Lieutenant-Governor may direct that in any district a fund to be called the "Estates' Partition Fund" shall be formed, into which all sums levied from the proprietors of estates in respect of partitions of their estates shall be paid.

"at the rate prescribed in Article 823 of the Civil Service Regulations is levied on the salaries." 3-8-90.

"and of 9th August 1890, No. 23, Collection 10, File 15."
3-8-90.

Whenever such a fund shall have been established in any district, all expenses of making partitions of estates in such district shall, except as hereinafter otherwise provided, be defrayed from such fund.

Procedure when Estates' Partition Fund formed in any district.

46. Whenever the Lieutenant-Governor shall have ordered an "Estates' Partition Fund" to be formed in any district, the charges leviable from the proprietors of any estate under partition may be estimated and levied according to the estimate in each case as provided in sections thirty-nine and forty, subject to final adjustment, as provided in section forty-two; or they may be levied according to a general scale of fees to be fixed by the Board.

NOTE.—The fees or charges levied under this section and section 47 are to be credited to XXIII. "Miscellaneous" and not to "Miscellaneous Land Revenue." (Board's Circular Order No. 3 of June 1883.)

Scale of fees.

47. Such scale of fees shall be fixed as nearly as may be, so that the receipts and expenditure of the said fund shall balance one another, and shall be revised from time to time by the Board for that purpose.

Such fees shall be levied from the proprietors in such instalments and at such times during the progress of the partition as may be fixed in accordance with any rules which the Board may make in that behalf, and the provisions of section forty shall be applicable to such fees.

NOTE.—*See* NOTE to section 46.

Abstract of Estates' Partition Fund to be published.

48. An abstract of the Estates' Partition Fund of each district made up to the end of each year shall be published in the *Calcutta Gazette*, and by being posted up at the office of the Collector of the district.

What costs of partition chargeable to Estates' Partition Fund.

49. For the purposes of sections forty-five, forty-six, and forty-seven, the expenses of making partitions in any district shall be deemed to be—

(*a*) the cost of all establishments entertained in the district under section thirty-seven;

(*b*) all contingent expenses incurred in all partitions in the district;

(*c*) the cost of any special establishment appointed in the office of the Collector under section thirty-eight;

(*d*) such portion as the Commissioner may direct of the cost of any special establishment appointed in his office under section thirty-eight;

(*e*) the salary of any one or more Deputy Collectors which the Lieutenant-Governor may have ordered under section forty-three to be recovered from the proprietors of estates under partition.

NOTE.—*See* also NOTE to section 44.

Civil Court may in certain cases order parties to pay expenses incurred in dividing an estate.

50. Whenever any Civil Court shall make a decree awarding or declaring any proprietary right in an estate, and shall require the Collector to make a partition of the estate, such Court may at the same time direct,

that the party or parties who may have withheld the right so decreed shall defray the whole of the expense which may be incurred in and

about the partition, or the whole of the fees payable in respect of the partition under section forty-six,

or that the said expenses or fees shall be defrayed by all or any of the parties to the suit in which the decree was made in such proportions as the Court may, from a consideration of the particular circumstances of the case, deem equitable;

Copies of all orders which the Court may pass under this section shall be transmitted to the Collector for his guidance, together with the precept which the Court may issue to him requiring him to divide the estate; and the Collector shall levy the said expenses and fees from the parties in the proportion ordered by such Court in the same manner and by the same means as if the levy of such expenses and fees had been ordered by the Collector.

PART V.

Of the Partition Proceedings up to the adoption of a Rent-Roll and Measurement Papers.

As soon as estate declared to be under partition, Deputy Collector shall cause notification to be published.

51. As soon as the Collector shall have made an order under section thirty-one declaring an estate to be under partition, the Deputy Collector shall cause a notification to be published in the manner prescribed by section one hundred and thirty-four, and shall also cause copies thereof to be posted up at the Court of the Judge of the district in which any lands appertaining to the parent estate are known to be situated, and at the Court of every Munsif and of every sub-divisional officer within the jurisdiction of whom, and at every police station within the jurisdiction of which, any such lands are known to be situated, intimating his intention to proceed with the partition, and requiring all the proprietors of the estate to produce before a certain date, being not less than forty days from the date of such notification, either jointly or separately, copies of their rent-rolls and statements of the rents collected during each of the three years next preceding, and also copies of any measurement papers of the estate which may be in their possession.

A notice to the same effect shall also be served as provided in section one hundred and thirty-five on each proprietor of the parent estate.

The Deputy Collector may, on sufficient grounds for so doing being shown to his satisfaction, from time to time extend the period for producing any such return.

Rent-roll filed by a proprietor to be subscribed and verified.

52. Every rent-roll, statement of rents collected, and measurement paper furnished to the Collector under this Act shall be presented by the person who is required to produce the same or by a duly authorised agent of such person who has a personal knowledge of the facts stated therein, and shall be subscribed and verified at the foot by such person or such agent in the manner following, or to the like effect:—

"I, A, B, do declare that this rent-roll (*statement or measurement paper*) is correct to the best of my knowledge and belief."

If the rent-roll, statement or measurement paper shall contain any entry which the person making the verification shall know or believe to be false, or shall not believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.

Procedure if person required cannot produce rent-roll or statement.

53. If any proprietor who is required to produce any rent-roll or statement by notice as aforesaid is unable to produce such rent-roll or statement, he shall state to the Deputy Collector the cause thereof and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll and statement, and the Deputy Collector may, if he shall think fit, require such person to produce such rent-roll and statement.

Deputy Collector may order measurement of land and may test rent-roll.

54. The Deputy Collector may, if necessary, make, or may cause to be made, a measurement of all or any of the lands comprised in the estate, and may prepare or cause to be prepared a rent-roll, and may test or cause to be tested on the spot any rent-roll which has been produced as aforesaid, and may make or cause to be made any local enquiry which he may consider necessary.

NOTE.—At present measurement is ordinarily made by the native method by pole and chain only. A proposal came before the Board from a district in the Patna Division to introduce measurement by chain and compass. The Board considered that the change of system would be an improvement, but that it would probably also prove much more expensive than the ordinary method, and that the additional expense would be a heavy burden on the estates under partition. It was ultimately decided that, though it was at present inexpedient to adopt the proposal in full, yet when the existing amins have learnt the scientific system of measurement, they should be directed to adopt it, and that amins should in future be introduced who understand the scientific system. (Board's Proceedings of 10th October 1885, No. 314, Collection 7, File No. 546.)

Deputy Collector to summon proprietors by proclamation to attend proceedings.

55 Before proceeding or deputing the amin to the spot, the Deputy Collector shall publish a notification in the manner prescribed by section one hundred and thirty-four, requiring the several proprietors of the estate, their managers, and any other persons employed in the management of the land, or otherwise interested therein, to attend in person or by agent upon him, or upon the amin who is deputed to make the measurement or enquiry, for the purpose of pointing out boundaries and of affording such assistance and information as may be required for the purposes of this Act.

Deputy Collector and amin may require attendance of proprietor or any other person.

56. The Deputy Collector, and any amin or other person who is specially authorized in that behalf by the Collector, may, by a notice served as provided in section one hundred and thirty-five, require any proprietor or other person whose attendance may be required to attend before the Deputy Collector or amin who is making such measurement or enquiry within a specified time at any place for any of the purposes aforesaid.

Deputy Collector to test amin's work

57. If any objection be made to a measurement, map, or rent-roll prepared by the amin, or if for any other reason it seems desirable, the Deputy Collector shall, as soon as possible after completion of the amin's

work, himself test, or shall cause to be tested on the spot, such measurement, map, and rent-roll, and may accept, amend, or reject the same or any of them. If the Deputy Collector shall deem it necessary, he may cause the work or any portion thereof to be done again.

Examination of the parties and their papers.

58. The Deputy Collector may examine any person on solemn affirmation in regard to the papers produced before him, whether by the proprietors, by the amin, or otherwise, and shall allow the parties concerned to put any necessary questions to such person.

The Deputy Collector shall also allow any proprietor or other person interested to examine the papers so produced, and to take a copy of the same, and after such examination shall hear any objections which any of the persons interested may make in respect of such papers, and shall decide whether any, and (if any) which of the papers, as they stand, or with such modifications as he may think necessary, shall be accepted as correct for the purposes of the partition.

Power of Deputy Collector if proprietor fails to file rent-roll.

59. If any proprietor who has been required to produce a rent-roll or statement under section fifty-one, fails to produce the same after the imposition on him of a fine under section one hundred and thirty-seven for thirty days, or fails to state to the Deputy Collector the name and address of any person under section fifty-three, the Deputy Collector may declare that the said proprietor shall, for the purposes of the partition, be bound by such rent-roll as the Deputy Collector may adopt as the basis of the partition as hereinafter provided, and after such declaration any officer exercising authority under this Act may refuse to entertain any objection which such proprietor may make to such rent-roll.

Power of Deputy Collector, if person fails to produce rent-roll.

60. If any person who has been required to produce a rent-roll or statement under section fifty-three, shall fail to produce the same after the imposition on him of a fine under section one hundred and thirty-seven for thirty days, the Deputy Collector may declare that the proprietor who may have stated the name of such person under section fifty-three shall, for the purposes of the partition, be bound by the rent-roll which the Deputy Collector may adopt for the basis of the partition as hereinafter provided, and after such declaration any officer exercising authority under this Act may refuse to entertain any objection which such proprietor may make to such rent-roll.

Collector may dispense with rent-roll, maps, and other papers.

61. Notwithstanding anything contained in this Act, if it shall appear to the Deputy Collector that any measurements, maps, rent-rolls, or other papers relating to the estate which have been prepared otherwise than for the purposes of the partition, or otherwise than for the purposes of this Act, afford information sufficiently trustworthy to enable him to effect the partition, the Deputy Collector may adopt such information and such papers either wholly or in part for the purposes of the partition, and may dispense with any rent-rolls, maps, or other papers for which he is authorised to call, or which an applicant is required to produce under this Act.

Proprietor who has failed to attend shall not be entitled to object subsequently.

62. No proprietor or other person, who shall have failed to attend in person or by agent during the measurement as required by the notification published under section fifty-five, shall be entitled at any subsequent time to make any objection to such measurement; but the Collector may admit any objection made by such proprietor or person if he think fit, provided that any expense entailed by a local enquiry made in consequence of such subsequent objection shall be paid entirely by such proprietor or person.

Notification of date for deciding the mode of partition.

63. When the Deputy Collector is finally satisfied that the papers before him, whether rent-rolls, measurement papers, maps, or other papers, are sufficient and sufficiently correct to be accepted or adopted for the purposes of the partition, he shall make an order to that effect, and shall fix a day on which to determine the general arrangement of the partition, and shall publish a notification in the manner prescribed by section one hundred and thirty-four, calling on all the proprietors to be present on the day so fixed, such day being not less than thirty or more than sixty days after the publication of the notification in his office, and shall serve a notice to the same effect on each proprietor or his agent.

NOTE.—In the case of an estate in which several mouzahs had completely diluviated since the measurement of 16 years before, and valuable large accretions had occurred in other mouzahs, none of which were shown in any of the maps or papers, the Board observed (there being apparently a number of small shareholders) that it would be incumbent on the officers making the partition to exercise considerable caution that the Government revenue does not ultimately suffer by the butwarra, as small shares, consisting of lands in villages subject to active diluvion, may completely disappear in a few years to the serious detriment of the Government revenue. (Board's Proceedings of 18th December 1886, No. 85, Collection 5, File 247.)

PART VI.

OF PARTITION BY AMICABLE ARRANGEMENT OR BY ARBITRATION.

Deputy Collector may allow parties to make a private partition.

64. On the date fixed under the last preceding section, if a petition to that effect signed by all the recorded proprietors shall have been presented, the Deputy Collector may allow such proprietors to make a private partition of the estate amongst themselves on the basis of the papers which have been accepted or adopted for the purposes of the partition by the Deputy Collector, or may refer the partition to be made by an arbitrator or arbitrators on such basis.

If the proprietors who have elected to make such private partition shall fail to make the same within such time as may be fixed by the Deputy Collector, the Deputy Collector may refer the partition to be made by an arbitrator or arbitrators, or may make the partition himself.

Procedure on reference to arbitration.

65. Whenever any partition shall have been referred to arbitration, the proceedings shall be conducted in accordance with the provisions of sections 313 to 325 (both inclusive) of Act VIII of 1859 (*an Act for simplifying the*

procedure of the Court of Civil Judicature not established by Royal Charter) as far as those provisions are applicable, and except as herein otherwise expressly provided.

NOTE —Act VIII of 1859 has been repealed, and the corresponding sections are 506 to 522 of Act XIV of 1882. These are here inserted at length for facility of reference.

Parties to suit may apply for order of reference.

506. If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply, in person or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Every such application shall be in writing and shall state the particular matter sought to be referred.

Nomination of arbitrator.

507. The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

When Court to nominate arbitrator.

If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

Order of reference.

508. The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except as hereinafter provided.

When reference is to two or more, order to provide for difference of opinion.

509. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators,—

(*a*) by the appointment of an umpire, or
(*b*) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or
(*c*) by empowering the arbitrators to appoint an umpire, or
(*d*) otherwise, as may be agreed between the parties ; or, if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

Death, incapacity, &c., of arbitrators or umpire.

510. If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies or refuses or neglects or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return at an early date, the Court may in its discretion either appoint a new arbitrator or umpire in the place of the person so dying or refusing or neglecting or becoming incapable to act, or leaving British India, or make an order superseding the arbitration, and in such case shall proceed with the suit.

Appointment of umpire by Court.

511. Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire ; and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

Powers of arbitrator or umpire appointed under sections 509, 510, 511.

512. Every arbitrator or umpire appointed under section 509, section 510 or section 511 shall have the like powers as if his name had been inserted in the order of reference

Summoning witnesses.

513. The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it.

Punishment for default, &c.

Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

Extension of time for making award.

Supersession of arbitration.

514. If, from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the suit.

When umpire may arbitrate in lieu of arbitrators.

515. When an umpire has been appointed he may enter on the reference in the place of the arbitrators—

(a) if they have allowed the appointed time to expire without making an award, or

(b) when they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

Award to be signed and filed.

516. When an award in a suit has been made the persons who made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

Arbitrators or umpire may state special case.

517. Upon any reference by an order of the Court the arbitrators or umpire may, with the consent of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court; and the Court shall deliver its opinion thereon; and such opinion shall be added to and form part of the award.

Court may, on application, modify or correct award in certain cases.

518. The Court may, by order, modify or correct an award—

(a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred, or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

Order as to costs of arbitration.

519. The Court may also make such order as it thinks fit respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

When award or matter referred to arbitration may be remitted.

520. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit,—

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration;

(b) where the award is so indefinite as to be incapable of execution;

(c) where an objection to the legality of the award is apparent upon the face of it.

Grounds for setting aside award.

521. An award remitted under section 520 becomes void on the refusal of the arbitrators or umpire to reconsider it. But no award shall be set aside except on one of the following grounds, namely:

(a) corruption or misconduct of the arbitrator or umpire;

(*b*) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(*c*) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit;

and no award shall be valid unless made within the period allowed by the Court.

Judgment to be according to award.

52. If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

the Court shall, after the time for making such application has expired, proceed to give judgment according to the award,

or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

Decree to follow.

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this code for the execution of decrees. No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

Arbitrators to deliver a partition paper.

66. The arbitrators shall deliver, within a time to be fixed by the Deputy Collector, which time may be further extended by him, a full and complete paper of partition, in such form as may be prescribed by the Board for partitions made by the Collector or Deputy Collector.

Remuneration of arbitrators.

67. The arbitrators, on delivering the paper of partition as aforesaid, shall be entitled to reasonable fees for their services, the amount of which shall be fixed, with the approval of the Commissioner, by the officer making the reference to arbitration, and shall be considered to form part of the cost of making the partition.

Partition made under this Part to be subject to approval of Collector, and superior revenue authorities.

68. Every partition made under the provisions of this Part by the parties, or by arbitrators appointed by them, shall be subject to the approval of the Deputy Collector and to the confirmation of the Collector and the orders of the superior revenue authorities; provided that neither the Deputy Collector nor any other authority shall disallow any partition so made on any other ground than that of fraud, or that, in the opinion of the Deputy Collector or such other authority, the partition cannot be confirmed without endangering the safety of the land revenue.

Land revenue to be assessed by Collector.

69. Whenever a partition has been made under the provisions of this Part, the land revenue shall be assessed by the Collector on each separate estate into which the parent estate is divided by such partition in the manner prescribed by section six.

In default of delivery of partition paper, Collector may withdraw case from arbitration.

70. If the paper of partition be not delivered within the time fixed by the Deputy Collector, or within any further period to which the time may have been extended, the Deputy Collector may withdraw the case from arbitration and may make the partition himself.

PART VII.

OF THE PROCEDURE FROM THE DETERMINATION OF THE GENERAL ARRANGEMENT OF THE PARTITION BY THE DEPUTY COLLECTOR TO THE APPROVAL OF THE PARTITION BY THE COLLECTOR.

Procedure when no petition presented under section 64.

71. If no petition shall have been presented under section sixty four, the Deputy Collector shall, on the date fixed under section sixty-three, or on any other date to which the hearing may have been postponed by a notice posted at the office of the Deputy Collector, consult orally each proprietor present, and endeavour, as far as possible, with the concurrence of the proprietors present, to settle a general arrangement of the partition in accordance with the requirements of this Act.

For this purpose he shall endeavour to obtain from each proprietor an acknowledgment of his acceptance of the rent-roll, map, and any other papers which have been adopted by the Deputy Collector for the purposes of the partition, and shall briefly record the objections of any proprietor who still objects to accept such rent-roll, map, or other papers.

Deputy Collector may postpone settlement of general arrangement of partition.

72. If, in consequence of any objections made before the Deputy Collector has settled the general arrangement of the partition as provided in the last preceding section, the Deputy Collector considers it necessary to make further enquiry, he may, by notice to the recorded proprietors, postpone the settlement of the general arrangement of the partition to a date being not less than fifteen days from the service of the notice on any proprietor.

Deputy Collector may award compensation for attendance to proprietor.

73. If the objections on account of which the said settlement is postponed are such that the person making the same might have made them on an earlier day, the Deputy Collector may award to each proprietor, who shall have attended in person or by agent in accordance with the notice, such sum, not exceeding sixteen rupees, as he shall think fit by way of compensation for such attendance.

The sum so awarded shall be paid by the person making the objections as aforesaid, and may be recovered from him in the manner provided by section one hundred and thirty-eight.

If no postponement made, Deputy Collector to determine the general arrangement of the partition.

74. If the objections have already been enquired into and disposed of, or are such as not to render necessary any further enquiry and postponement, or when any objections which may require further enquiry have been disposed of, the Deputy Collector shall record an order to that effect, and, after hearing what each proprietor present may urge, shall hold a proceeding determining the general arrangement of the partition and the mode in which the parent estate shall be divided, and, in a general way, the position of the lands which shall be assigned to each of the separate estates.

In determining the general arrangement of the partition, the Deputy Collector shall be guided by the rules which are laid down in Part VIII, and shall direct the partition to be made in the manner

which, in his opinion, is on the whole most in accordance with such rules, and most equitable and most convenient to all parties concerned.

NOTE.—The general arrangement of the partition must be determined by the Deputy Collector himself. It should never be left to the Amin. (Board's Proceedings of 13th April 1878, No. 60, Collection 7, File 65.)

General arrangement of partition to be submitted for sanction of Collector.

75. The general arrangement of the partition, as determined under the last preceding section, shall be submitted for the sanction of the Collector, who shall by notice fix a date for the consideration of the same, not being less than fifteen days after the publication of the said notice in his office, and, after hearing and disposing of any objection which may be preferred, shall pass such orders as he may think proper, setting aside, amending, or approving the general arrangement made by the Deputy Collector.

NOTE.—A Deputy Collector, in the exercise of executive functions, is in the fullest sense the assistant and agent for carrying out the views of the Collector, and over his proceedings the Collector is bound to exercise the closest superintendence, and to interfere whenever he thinks proper to do so. The relative positions of Collector and his Deputy are entirely different from those of a Collector and Commissioner, or those of the Commissioner and the Board. (Board's Proceedings of 14th May 1881, No. 155, Collection 7, File 493.)

Deputy Collector to fix boundaries.

76. When the general arrangement has been approved by the Collector, the Deputy Collector shall proceed to fix the exact boundaries of each separate estate, after considering the wishes which the parties may express in respect thereof.

Deputy Collector to draw up paper of partition and map.

77. When the Deputy Collector shall have so determined the boundaries, he shall cause to be drawn up a paper of partition, specifying in detail the villages and lands which he has included in each of the separate estates, the rental thereof, with any other assets of each separate estate, the name or names of the recorded proprietor or proprietors of each separate estate, any stipulations which may have been made regarding places of worship, tanks, or other matters as mentioned in Part VIII, and the amount of land revenue to be assessed on each separate estate; he shall also prepare a map showing the lands which fall within each separate estate and the boundaries thereof, unless the preparation of such map shall be dispensed with by special permission of the Collector.

Deputy Collector to submit papers to Collector.

78. The Deputy Collector shall submit the partition paper and map as aforesaid and all other papers of the partition to the Collector with a full report of the proceedings taken, the reasons which influenced the Deputy Collector in selecting the lands included in each separate estate, the nature of the accounts upon which the apportionment of the land revenue assessed thereon has been based, and all other particulars material to the case.

Deputy Collector to prepare extracts of partition papers for each proprietor.

79. The Deputy Collector shall at the same time cause to be prepared a separate extract of the portion of the partition paper which relates to each separate estate,

and shall cause to be tendered to any recorded proprietor of a separate estate, or any authorized agent of such proprietor, who may be in attendance at the Deputy Collector's office, the extract which relates to such separate estate;

and the Deputy Collector shall publish a notice at his office calling upon every proprietor to whom or to whose agent an extract from the partition paper has not been tendered as above mentioned, to take out of the Deputy Collector's office the extract of the portion of the partition paper relating to his separate estate.

If the circumstances of the partition so require, an extract of the map prepared by the Deputy Collector, or a copy of such map, shall be annexed to every separate extract from the partition paper herein mentioned.

On receipt of papers and report Collector to publish notification.

80. On receipt of the papers and report mentioned in section seventy-eight, the Collector shall cause a notification to be published in the manner prescribed by section one hundred and thirty-four fixing a date, not being less than six weeks from the date of the publication of such notification on the parent estate, on which he will proceed to take up the case, and to consider any representations and objections which may be preferred in respect of the partition made by the Deputy Collector, and calling on all parties concerned who may wish to do so, to inspect the papers at his office before such date, and to take copies of any such papers as they may require.

The Collector shall also cause a notice to the same effect to be served on each of the recorded proprietors.

Procedure of Collector thereupon.

81. On the date so fixed, or on any other date to which the hearing may have been postponed, the Collector shall take into consideration the papers as laid before him, and after calling for any further information which he may deem necessary, and disposing of any objections which shall be made to the proposed partition and allotment of land revenue, may approve the partition as made by the Deputy Collector with such amendments as he may think proper, or return it for amendment to the Deputy Collector who made it, or to another Deputy Collector, or make a fresh partition himself.

The Collector may return the said papers for amendment or enquiry as often as he may think fit.

NOTE.—The modifications which a Collector is entitled under this section to make in a general arrangement of partition finally settled under section 75 are such as are referred to in sections 76 and 77, and relate to the fixing of the exact boundaries of each separate estate, to assessing of the land revenue on each such estate and other matters of detail. He cannot change the general arrangement approved by him under section 75 and confirmed or amended by the Commissioner on appeal. (Board's Proceedings of 18th December 1886, No. 87, Collection 7, File 249.)

Proprietor when not entitled to make subsequent objection.

82. No proprietor who shall have failed to appear before the Deputy Collector in person or by agent on any date fixed for the arrangement of the partition under section sixty-three or section seventy-two, and no proprietor who shall have failed so to appear before the Collector on any date fixed under either of the two

last preceding sections, shall be entitled, at any subsequent time, to make any objection to the orders which may be passed on such dates respectively.

Collector may cause a fresh partition paper and map to be prepared.

83. When the Collector approves the partition made by the Deputy Collector with amendments, he may cause a fresh partition paper and map to be prepared, or may cause the amendments made by him to be noted on the paper and map submitted by the Deputy Collector.

When the Collector makes a fresh partition himself, he shall cause a fresh partition paper and map to be prepared.

Procedure when Collector approves of a partition without amendment.

84. Whenever the Collector shall have approved a partition (whether with or without amendment), he shall cause a notice to be served on each of the recorded proprietors that the papers will be submitted at once for confirmation of the partition by the Commissioner, and that any appeals or objections must be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days of the date of the service of the said notice, or, if the Collector has approved the partition with amendments, and the notice requires the proprietor to produce the extract of any partition in order that amendments may be noted thereon, or to take out a fresh extract from the partition paper, as provided in the next succeeding section, then within six weeks of such date.

Procedure when Collector approves partition paper with amendments.

85. Whenever the Collector shall have approved a partition with amendments, and shall, under section eighty-three, have caused such amendments to be noted on the partition paper and map submitted by the Deputy Collector, the notice to be served on each of the recorded proprietors under the last preceding section shall, in the case of every such proprietor whose separate estate is affected by such amendment, in addition to the particulars mentioned in the said section, require such proprietor to produce before the Collector, within fifteen days of the service of such notice, the extract from the paper of partition which has been prepared, and any map relating to his separate estate which may have been prepared under section seventy-nine, in order that the amendments made by the Collector in the partition may be noted thereon; and such amendments shall be noted thereon by the Collector accordingly, and such extract and map shall be returned to the proprietor who produced them.

Whenever the Collector shall have caused, under section eighty-three, a new partition paper and map to be prepared, he shall order separate extracts from the portions of the partition paper which relate to each separate estate, and maps, if necessary, to be prepared as required by section seventy-nine, and in such case the notice served under the last preceding section shall, in addition to the particulars mentioned in that section, declare the extracts and maps which were furnished or offered to proprietors under section seventy-nine to be cancelled, and shall require the recorded proprietors to take out of the Collector's office such extracts and maps relating to their respective separate estates.

86. As soon as practicable after the issue of the notice under section eighty-four, the Collector shall forward to the Commissioner all papers relating to the partition as approved or as made by the Collector.

Papers to be forwarded to Commissioner.

PART VIII.

OF THE GENERAL PRINCIPLES ON WHICH PARTITIONS SHALL BE MADE.

Rules applicable to the partition of lands which are held by the proprietors in common tenancy.

87. Each separate estate shall be made as compact as is compatible with the primary object of making an equitable partition among the proprietors, and with the other provisions of this Part, but no partition made or approved by a Collector shall be set aside on the ground only that the separate estates are not compact.

Estates formed in course of partition to be as compact as possible.

88. In selecting the villages or lands to be assigned to each separate estate formed out of a parent estate which has been held in common tenancy, the Collector shall take into consideration the advantages or disadvantages arising from situation;

Circumstances to be considered in making partitions.

the vicinity of roads, railways, navigable rivers, or canals;
the nature and quality of the soil and produce;
the quantity of cultivable and uncultivable waste land;
the facilities for irrigation;
the state of the embankments and water-courses;
liability to accretion and diluvion,
and any other circumstances, affecting the value of the lands.

89. If a dwelling-house belonging to one proprietor is situated on any land which it may be necessary to include in the separate estate of another proprietor, the owner of such house may retain occupation thereof with the offices, buildings and grounds immediately attached thereto, upon agreeing to pay rent for the land occupied by such dwelling-house, offices, buildings, and grounds to the proprietor of the separate estate in which such land is included.

Rule when dwelling-house belonging to one proprietor is situated on ground to be allotted to another proprietor.

The limits of the land so occupied and the rent to be paid for it in perpetuity shall be fixed by the Deputy Collector, and shall be stated in the paper of partition.

In every such case a defined pathway shall, as far as possible, be secured to the owner of the house, leading from his house to some portion of the separate estate allotted to him.

90. Whenever the Deputy Collector shall think fit, he may apply the rule contained in the last preceding section to gardens, to orchards of trees, to land planted with bamboos, and to any other lands which in his opinion are of special value to the proprietor in whose occupation they are found to be, in consequence of improvements

Rule contained in last preceding section may be applied to gardens, orchards, &c.

made by such proprietor or of the particular use to which such lands are put.

Calculation of rental.

91. The rent fixed in perpetuity on any land by the Deputy Collector under either of the two last preceding sections shall be considered to be the rental of such land for the purposes of the partition.

Rent may be redeemed.

92. Whenever the dwelling-house of one proprietor, with the offices, buildings, and grounds immediately attached thereto, shall have been included in the separate estate of another proprietor, and the annual rent to be paid in perpetuity in respect of the land occupied thereby shall have been fixed by the Deputy Collector and stated in the paper of partition, the proprietor whose dwelling-house, offices, buildings, and grounds have been included as aforesaid may apply to the Deputy Collector for permission to redeem the annual rent so fixed, and the Deputy Collector shall give such permission, unless he shall be of opinion that such redemption would endanger the safety of the land revenue for the payment of which the separate estate in which such dwelling-house, offices, buildings, and grounds have been included will be liable.

Deputy Collector to certify amount payable in redemption of rent.

93. If the Deputy Collector shall see no such reason to refuse his permission to the redemption being made, he shall certify the amount payable by such proprietor in redemption of such annual rent; and such amount shall be calculated and fixed by the Deputy Collector at ten per centum above the sum which would be required to purchase, at the market prices then prevailing, so much stock of the Government loan which was last issued as would yield an annual amount of interest equal to the annual land rent fixed by the Deputy Collector under section eighty-nine.

But not after possession of separate estates has been given.

94. The proprietor, desiring to redeem the rent as aforesaid, may pay to the Deputy Collector the amount so certified at any time before possession is given to the several proprietors of the separate estates allotted to each, as provided in section one hundred and twenty-three, but not after such possession has been given.

Notice of payment to be given, and land to be held rent free

95. On receipt of such payment, the Deputy Collector shall give notice to the proprietor in whose separate estate such land is situated that such payment has been made, and that the sum will be paid to him or to his authorised agent on application; and that, from the date on which possession as aforesaid may be given, the proprietor who has redeemed the rent of such land will be entitled to hold such land as a rent-free tenure secured against the proprietor of the estate and against any auction purchaser at a sale for arrears of revenue, including the Government; and from such date the lands shall be so held as a rent-free tenure.

Collector to register rent free tenure.

96. The Deputy Collector shall at the same time also give notice to the Collector of the district of the creation of such tenure; and the Collector of the district shall thereupon cause such tenure to be specially registered in the manner provided by section 42 of Act XI of 1859, or by any similar law for the time being in force.

Lots may be drawn for equal shares.

97. When two or more of the separate estates shall consist of the same proportions of the parent estate, the Deputy Collector may, if he thinks proper, direct the parties entitled thereto respectively to draw lots in his presence for the equal separate estates which have been formed by assignment of lands, unless the recorded proprietors of the equal shares shall agree among themselves as to the allotment of the equal separate estates and shall present a petition to that effect; or unless for any other reason the Deputy Collector shall, with the sanction of the Collector, think proper to assign the equal separate estates to the proprietors of the equal shares without causing lots to be drawn.

Order and method of drawing lots when aggregate of two or more shares equals one other share.

98. When the aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares, the Deputy Collector, with the sanction of the Collector, may cause such aggregate shares to be treated as one share for the purpose of determining by lots as aforesaid which portion of the parent estate shall be assigned to each proprietor as his separate estate;

and may decide which shares shall be formed into one aggregate share for the purpose of causing such lots to be drawn;

and may cause lots to be drawn in like manner as often as he shall think proper for such purpose.

And after lots shall have been drawn once (or more than once if necessary) as aforesaid, the Deputy Collector shall proceed to divide the portion of the parent estate which has fallen by lot to each aggregate share, among the proprietors of the different shares which were formed into such aggregate share for the purpose of drawing lots, and shall assign to every such proprietor his separate estate within such portion in such position as the Deputy Collector may think proper.

Provided that lots shall in no case be drawn until after full opportunity shall have been given to the proprietors to advance their objections in respect of the papers accepted as the basis of the partition and in respect of the assets of the different lands as stated in such papers, and until any such objections which may have been made shall have been disposed of.

Illustrations.

I.—The partition of a parent estate is being made into the following shares:—

8 annas.
4 annas.
3 annas.
1 anna.

For the purposes of drawing lots, the 4 annas, 3 annas, and 1 anna share may be taken together, and considered to be an aggregate 8 annas share.

The Deputy Collector will divide the parent estate into two halves of equal value, and will then cause lots to be drawn, in order to determine which of the two halves shall be assigned to the proprietor of the integral 8 annas share, and which shall be divided among the proprietors of the 4 annas, 3 annas, and 1 anna shares.

Subsequently, if necessary, the Deputy Collector may again cause lots to be drawn by the proprietor of the 4 annas share on the one hand, and the proprietors of the aggregate share made up by taking together the 3 annas share and the 1 anna share.

II.—The partition is being made of a parent estate into the following shares :—

6 annas.
4 annas.
3 annas.
2 annas.
1 anna.

Two tracts in the estate may first be marked off, the value of each being equivalent to a 6 annas share; and then, for the purpose of drawing lots in respect of the assignment of these two tracts, the 4 annas share and the 2 annas share may be taken together as an aggregate 6 annas share, and lots may be drawn between the proprietor of the aggregate 6 annas share so formed on the one hand, and the proprietor of the integral 6 annas share on the other.

One of the two 6 annas tracts having thus been finally assigned to the proprietor of the integral 6 annas share, the Deputy Collector will proceed to assign the rest of the estate among the remaining sharers; and he may again, for the purpose of causing lots to be drawn, mark off two tracts, the value of each of which shall be equivalent to 5 annas of the parent estate, and may cause lots to be drawn for these two tracts between the proprietors of the 4 annas share and the 1 anna share taken together as an aggregate 5 annas share on the one hand, and the proprietors of the 3 annas share and the 2 annas share taken together as another 5 annas share on the other.

Finally, their separate estates will be assigned to the proprietor of the 4 annas share and of the 1 anna share respectively, within the tract which fell to them jointly by lot; and their separate estates will be assigned to the proprietors of the 3 annas share and of the 2 annas shares respectively within the tract which fell to them jointly by lot.

Deputy Collector may require proprietors to attend or appoint agent for the purpose of drawing lots.

99. The Deputy Collector may, by a notice served as provided in section one hundred and thirty-five, require any proprietor in respect of whose share lots are to be drawn as provided in either of the two last preceding sections, to attend at the office of the Deputy Collector in person or by authorized agent at a time to be fixed by the Deputy Collector for the purpose of drawing lots;

and may similarly require the proprietors of any shares which he may have ordered to be formed into an aggregate share for the purpose of drawing lots, jointly to appoint an agent to draw lots on their joint behalf; and if at the time fixed for drawing such lots such proprietors have failed to agree to any such joint appointment, or shall fail to cause the attendance of an agent authorized to act jointly for all such proprietors, all such proprietors shall be deemed to have failed to comply with the Deputy Collector's requisition.

In default Deputy Collector may appoint a person to draw lots.

100. Whenever any proprietor or proprietors shall have failed to comply with a requisition of the Deputy Collector under the last preceding section, the Deputy Collector may appoint a person to draw lots on behalf of such proprietor or proprietors.

Rules applicable to the formation into separate estates of lands which are held by proprietors in severalty.

Joint petition may be presented for partition according to private division.

101. Whenever in any parent estate a division of the lands thereof has been made by private arrangement of the proprietors of such estate, and in accordance with such arrangement each proprietor is in possession of separate lands held in severalty as representing his interest in such parent estate, the joint application presented to the Collector by all the recorded proprietors of such estate as required by section twelve may be to the effect that a partition of such estate be made by assigning to each proprietor or to two or more proprietors jointly as his or their separate estate, the lands of which they are in separate possession in accordance with such arrangement, and also that each separate estate so formed be made liable for such portion of the entire land revenue of the parent estate as was paid by the proprietor or proprietors thereof under the private arrangement aforesaid.

Partition according to private division to be referred to Collector.

102. The Deputy Collector who is appointed to carry out the partition in accordance with such application shall satisfy himself that the assets of each separate estate which it is proposed to form are sufficient to secure the payment of the annual amount of land revenue for which it is proposed to make such separate estate liable; and if the Deputy Collector be satisfied that in this respect, and with reference to all the circumstances of the case, the partition of the lands and the assessment of the revenue thereon may be made in the manner proposed without endangering the safety of the revenue, the Deputy Collector shall submit the case with his opinion thereon, and the reasons on which such opinion is founded, to the Collector, who may admit or reject the said application.

Effect of Collector's approval.

103. If the Collector admits the said application, such admission shall be deemed to be the Collector's approval of the general arrangement of the partition as provided in section seventy-five, and the Deputy Collector shall proceed to complete the partition accordingly.

Such partition may be refused.

104. If the Deputy Collector, who is appointed to carry out the partition in accordance with a joint application under section one hundred and one, is not satisfied that the partition of the lands and the assessment of the revenue payable thereon can be made in the manner proposed without endangering the safety of the public revenue, or if the Collector rejects the application for such partition, the Deputy Collector shall refuse to make the same.

Joint petition may be presented for partition of land in accordance with private division with proportional redistribution of public revenue.

105. Whenever the proprietors of an estate are, in accordance with a private arrangement as aforesaid, respectively in possession of separate lands held in severalty as representing their respective interests in the estate, the joint application presented to the Collector by all the recorded proprietors of the estate, as required by section twelve, may be to the effect that a

partition of such estate be made by assigning to each proprietor, or to two or more proprietors jointly, as his or their separate estate, the lands of which they are in possession in accordance with such arrangement, and that the land revenue for which the parent estate is liable may be apportioned among the separate estates so formed in accordance with the provisions of section six.

A joint application under this section may be made notwithstanding that a joint application under section one hundred and one has been refused in respect of the same estate.

Lands of which each proprietor is in possession to be allotted to him.

106. Whenever the Deputy Collector who is appointed to carry out a partition shall find that, in accordance with a private arrangement made by the proprietors of an estate, the proprietors respectively, or any of the proprietors, are in possession of separate lands held in severalty as representing portions only of their respective interests in the parent estate, while other lands of the parent estate are held in common tenancy between such proprietors, a joint application as mentioned in section twelve shall not be necessary to authorise the Collector to make a partition of the estate, but the Deputy Collector shall allot to the separate estate of each proprietor the lands of which such proprietor is found to be in possession in severalty in accordance with such private arrangement.

Lands held in the occupation of the several proprietors of an estate as sir, khamar, or nij-jote, or under any other similar denomination, shall not be deemed to be lands held in severalty as representing portions of their respective interests in the parent estate within the meaning of this section, which applies only to cases in which there has been a *bonâ fide* division, by private arrangement among the proprietors, of land held by tenants.

Collector may cause transfer of lands agreed to by parties.

107. Notwithstanding anything contained in the last preceding section, the Collector may cause any transfer of lands agreed to by the parties to be made from the possession of one proprietor to that of another.

Rules applicable both to lands held in common tenancy and to lands held in severalty.

Rule as to places of worship.

108. Places of worship, burning grounds, and burial-grounds which have been held in common previous to the partition of an estate, and lands of which the proceeds have been assigned by the proprietors jointly for religious, charitable, or public purposes, shall continue to be held in common unless the proprietors shall otherwise agree amongst themselves, in which case they shall state in writing the agreement into which they have entered, and the Deputy Collector shall enter a note of the agreement in the paper of partition.

Rule as to tanks, wells water-courses, and embankments.

109. Tanks, wells, water-courses and embankments shall be considered as attached to the land for the benefit of which they were originally made.

In cases in which, from the extent, situation, or construction of such works it shall be found necessary that they should remain the joint property of the proprietors of two or more of the separate estates, the paper of partition shall specify, as far as the circumstances may admit, the extent to which the proprietors of each of such estates may make use of the same, and the proportion of the charges for repairs to be borne by them respectively.

Lands held rent-free not to be divided.

110. Whenever the Deputy Collector shall find in the parent estate lands which are actually held rent-free (whether the proprietors of the estate do or do not claim a right to receive rent from such lands), the Deputy Collector shall make no division or assignment of such lands among the separate estates, but shall specify in the partition papers and proceedings that such lands are left appertaining jointly to all the separate estates which are formed out of the parent estate, in the proportion which each separate estate bears to the parent estate.

Provided that such lands or any of them may be allotted among the different separate estates with the consent of all the recorded proprietors of the parent estate, but not otherwise.

Rule as to permanent intermediate tenures.

111. Whenever the Deputy Collector shall find in the parent estate any lands which are held at a fixed rent on a patni or other permanent intermediate tenure falling within Exception 2 or Exception 3 of section seven, the Deputy Collector may either

(1) assign the lands which are held on such tenure and the assets thereof entirely to one or more of the separate estates, the rental being calculated as provided in Exception 2 or in Exception 3 (as the case may be) of section seven ; or

(2) leave such lands unassigned to any separate estate, and specify in the partition paper and proceedings that the lands are left appertaining jointly to all the separate estates which are formed out of the parent estate in the proportion which each separate estate bears to the parent estate. In the event of such lands being so left undivided, the Deputy Collector shall assign to each separate estate such share of the rental of the tenure as shall bear the same proportion to the entire rental of the tenure, as the separate estate bears to the parent estate.

In dealing with a tenure under this section, the Deputy Collector shall take into consideration the extent of the lands comprised in the tenure, and all other circumstances of the case.

Lands held in common between the proprietors of two or more estates how to be dealt with.

112. Whenever any lands are held in common between the proprietors of two or more estates, one of which is under partition in accordance with the provisions of this Act, the Deputy Collector shall first allot to the estate under partition a portion of such common lands of which the assets are in proportion to the interest which the proprietors of such estate hold in the said common lands ; and all the provisions of this Act in respect of the allotment between the shareholders in one estate, of lands which are held jointly by such shareholders, shall, as far as possible, apply to

the allotment of the proportionate share of such common lands to the estate under partition;

and, in respect of the service of notices, hearing of objections, and all other procedure in view to such allotment, the proprietors of the estate under partition, and the proprietors of all other estates who have an interest in the said common lands, shall be deemed to be joint proprietors of a parent estate consisting only of the lands so held in common.

Provided that all expenses of any division of lands so held in common between the proprietors of two or more estates shall be deemed to be expenses of making the partition of the estate which is under partition and shall be leviable as provided by this Act from the proprietors of such estate, and the proprietors of any other estate having an interest in such lands shall not be required to bear any portion of such expenses.

NOTE 1.—The words "any lands" in the first clause of the section may be held to mean "all the lands" of two or more estates held in common by several proprietors. (Board's Proceedings of 2nd September 1882, No. 210, Collection 7, File 2209, and of 18th July 1885, No 264, Collection 5, File 385.)

NOTE 2.—An application having been made for the partition of an estate, a portion of the assets of which consisted of a fractional interest in the rents of a mouzah which was held in common with four other estates in the Collector's register, it was considered by the Board that this section did not cover the case. (Board's Proceedings of 20th February 1886, No. 97, Collection 2, File 630.)

NOTE 3.—Until the Collector has declared the extent of interest which the proprietors of the parent-estate are supposed to have in all the common lands of the several estates, no proceedings can be carried out under this section. (Board's Proceedings of 8th January 1887, No. 228, Collection 7, File 228.)

Proprietors of other estates may be required to pay a portion of expenses of partition.

113. Notwithstanding anything contained in the last preceding section, if it shall appear to the Commissioner, on the report of the Collector or otherwise, that the proceedings for such division have been unnecessarily delayed, and the cost of such division enhanced by obstacles vexatiously put in the way of the completion of such division by any proprietor of any estate other than that under partition, or by want of due diligence on the part of any such proprietor in carrying out any requisitions made upon him, the Commissioner may direct that such sum as he shall think fit shall be levied from every such proprietor who is responsible for such delay or additional cost, and every sum so levied shall be taken in diminution of the amount payable by the proprietors of the estate under partition as costs of such partition.

Allotment of lands held in common to be sanctioned by Collector.

114. The allotment to the estate under partition of the proportionate share of the lands so held in common shall be submitted for the approval of the Collector, who may confirm, amend or reject the same, and in the case of rejection, may make or direct to be made another allotment.

The portion of such common lands assigned to estate under partition how to be dealt with.

115. As soon as the allotment to the estate under partition of a proportionate share of the said lands shall have been approved by the Collector, the lands so allotted shall be dealt with in every respect as if they were held in common tenancy by such of the proprietors of the estate under partition as were found to hold interests in the common lands.

NOTE 5.—Certain lands were held in common by the proprietors of estates Nos.——— of the———towjih. The proprietors of each of these estates filed a separate application, not for partition of their several estates *inter se*, but for separation of the lands held in common and assignment of its proper share thereof to each of the above estates, the Government revenue of each remaining unaffected. The question whether the applications should be admitted and the estates declared to be under partition was referred by the Commissioner to the Board, who ruled as follows :—"The question for consideration is—can two or more entire estates not desiring partition as such, but having lands in common, get their common lands divided between them under section 112? The Board as at present constituted think that it would be conducive to the public convenience if they could, but they fear that the wording of the section is quite conclusive the other way. Section 112 can only come into operation when one of the estates is under partition as between its several proprietors. This is an indispensable condition.

"In this case there is no partition proposed of any estate as such, but only a separation of interests between 5 separate estates, and the law (section 112) cannot be applied."—(Board's Proceedings of 28th June 1890, No. 209, Collection 5, File 32 of 1890.) 1-7-90.

Procedure when dispute exists as to whether any lands form part of the parent estate.

116. If a dispute or doubt shall be found to exist as to whether any lands form part of the parent estate, the Deputy Collector shall enquire into the fact of possession, and shall report his conclusions, with the reasons thereof, to the Collector; whereupon the Collector may (whether the possession of disputed lands is with the proprietors of the parent estate or otherwise) order that the partition be struck off the file, and in that case no application for a partition of the said estate shall be admitted until the applicant can show that the dispute or doubt has been decided by a court of competent jurisdiction, or has been amicably settled;

Procedure when Collector thinks that lands belong to parent estate.

or if the Collector shall find that possession of the disputed lands is with the proprietors of the parent estate, and if it shall appear to him that the claim of the other parties to the right in such lands is untenable, he may order that the partition shall proceed, and that the disputed lands be treated as part of the estate under partition.

Provided that no partition shall be made under this section, if such partition would involve the assignment to any separate estate of such a quantity of the disputed land that the removal of such land from such estate would, in the opinion of the Collector, endanger the safety of the land revenue for which such estate would be liable after the partition.

NOTE.—While the partition proceedings of an estate were in progress, an objection was raised by the owner of another estate that his lands were included in the measurement of the estate under partition. Thereupon the Deputy Collector held a local enquiry, and it was found that the proprietors were in possession of a portion only of the lands claimed by the objector, and that the objectors were in possession of the rest of the land under objection. The Commissioner in appeal considered that the claims of the objectors could therefore not be said to have been wholly untenable, and held that the Collector had no option but to strike the case off the file. The construction which the Commissioner had put on this section was one in which the Board found themselves unable to concur. They observed that the object of this section was to provide a procedure in cases where there was a dispute as to whether any lands formed part of the parent estate. "Clause 1 provides for local enquiry by a Deputy Collector as to possession; clause 2 empowers the Collector in cases where he thought fit to do so to order the partition to be struck off the file, quite irrespective of the question whether possession be with the proprietor of the parent estate or not; clause 3 gives the Collector the alternative power in cases where he shall find that possession of the disputed land is with the proprietor, and that the claim of other parties to the right is untenable, to order the partition to proceed. The Board held that the fact that possession of only some of the lands claimed might be given to the proprietors did not affect the question in any way. The Board therefore held that the construction put by the Commissioner on clause 3 of this section was an erroneous one. They, however, in consideration of the numerous disputes existing as to the lands which formed part of the estate, ordered under the second clause of this section that the partition should be struck off the file. (Board's Proceedings of 14th March 1885, No. 399, Collection 5, File 1672).

Procedure when partition completed and proprietor of an estate dispossessed by order of a competent court.

117. If after a partition has been completed in accordance with an order passed by the Collector under clause three of the last preceding section, the proprietor of any separate estate shall be dispossessed by a decree of a court of competent jurisdiction of any lands which may have been assigned to his estate by the partition, such proprietor shall not be entitled to claim any

modification of the partition (which shall hold good), but shall be entitled to recover from the proprietors of the other separate estates formed by the partition such compensation as may be fair and equitable, having regard to the reduction in the proportionate value of his separate estate which is caused by such dispossession;

and such compensation may be recovered in a court of competent jurisdiction from the proprietors of those separate estates on which a proportionate share of the total loss caused by the order of dispossession does not fall.

PART IX.

Of the Procedure before the Commissioner up to the completion of the partition.

If no appeal presented, Commissioner may consider the case without issue of notice.

118. If no appeal or objection shall be presented within the time allowed by section eighty-four, the Commissioner may proceed to consider the case without issue of any notice, and may confirm the partition made by the Collector.

Commissioner to fix a day for hearing case.

119. If it shall appear to the Commissioner that the proceedings of the Collector should be amended, or if a petition of appeal or an objection shall have been presented within the time allowed by section eighty-four, the Commissioner shall fix a day for hearing and disposing of the case, and shall cause a notification of the same to be published and a notice of the same to be posted up in his own office.

Commissioner to confirm, amend, or return petition.

120. On the day so fixed, which shall not be less than thirty days after the publication of the said notification at the office of the Collector, or on any subsequent day to which the hearing of the case may extend, or on any subsequent day to which the hearing may have been postponed by a notice published in his own office, the Commissioner shall, after hearing and disposing of all objections, and calling for any further information which may be necessary, either confirm the partition as made by the Collector or amend the same, or return the papers of the partition to the Collector for any changes the Commissioner may think proper to be made.

If the partition is returned to the Collector for amendment, the Collector shall proceed to make the said amendments or to cause them to be made in the same manner as if he had himself passed such orders on a partition submitted to him for approval by a Deputy Collector.

Commissioner may return papers for amendment or enquiry.

121. The Commissioner may, before confirming a partition, return the papers for amendment or enquiry as often as he shall think fit, and as often as he shall so return them the procedure prescribed in the three last preceding sections shall be followed.

Procedure by Collector on receipt of order of Commissioner or of Board of Revenue on appeal.

122. After the expiration of not less than sixty days from the date of the order of the Commissioner confirming a partition, or, if an appeal has been preferred to the Board, or if any proceedings in respect of the partition be pending before the Board.

"NOTE—See Note to Section 32." 2-11-96.

then on receipt of the final order of the Board determining that the partition as sanctioned by the Commissioner shall not be disturbed, the Collector shall cause to be published in his office, and in some conspicuous place in each of the estates separately constituted by such order, a notice that the partition has been finally confirmed as it was sanctioned by the Commissioner, or with any amendments or alterations, as the case may be.

If the partition as finally sanctioned involves any amendments which may conveniently be made on the extracts of the partition paper and on any maps which have been prepared and delivered or offered by notice to the recorded proprietors as required by section seventy-nine or section eighty-five, the Collector shall cause a notice to be served on every recorded proprietor whose estate is affected by such amendments requiring him to produce such extracts and maps in order that such amendments may be noted on them;

and if the alterations made in the partition as finally sanctioned be such as to make it desirable to prepare fresh extracts and maps as aforesaid, the Collector shall cause such fresh extracts and maps to be prepared; and shall cause a notice to be served on each proprietor declaring the extract and map which was furnished or offered to him under section seventy-nine or section eighty-five, as the case may be, to be cancelled and requiring him to take out of the Collector's office the fresh extract and map which have been prepared.

Procedure as to giving possession of separate estates.

123. The Collector shall then proceed to give the several proprietors possession of the separate estates allotted to each, and, if necessary, may require the assistance of the Magistrate in giving such possession;

and shall cause to be served on every recorded proprietor of a separate estate a notice informing him that from the date specified in such notice the separate estate assigned to him (as described in the extract from the partition paper prepared and delivered or offered to him under section seventy-nine, section eighty-five, or the last preceding section, as the case may be) will be deemed to be separated from the parent estate, and to be separately liable for the amount of land revenue specified in such notice, and calling upon him to enter into a separate engagement for the payment of such revenue.

NOTE.—A sharer of an estate, the partition of which has been confirmed, is entitled to be placed in possession of the lands included in the partition, as demarcated and shown in the map and measurements and assigned to his share, but they will not be demarcated by the Collector. The proprietor of the newly-formed separate estate may himself demarcate his lands, and if any party feels himself aggrieved by the proceedings of the proprietor, his remedy lies in the Civil Court. (Board's Proceedings of 3rd August 1878, No. 268, Collection 7, File 143.)

Date specified in notice under preceding section.

124. The date specified in such notice shall not be more than three months after the proprietors have been put in possession of their respective separate estates as herein provided.

Each separate estate to be borne on the revenue roll as separately liable for revenue assessed upon it.

125. From the date specified in such notice, each separate estate shall be borne on the revenue roll and General Register of the Collector as a distinct estate separately liable for the amount of land revenue assessed upon it under this Act; and shall be so

liable, whether the proprietor have executed an agreement for the payment of the amount of land revenue so assessed upon the said estate, or whether he shall have failed to execute such agreement.

Collector may direct the construction of boundary marks.

126. The Collector may direct the construction of such boundary marks as he may think proper to distinguish the lands of each separate estate, and the cost of such boundary marks shall be deemed to be expenses of the partition.

Boundary marks erected under this Act shall be assigned to zemindars, or to zemindars jointly with tenure-holders, for preservation, as provided in the second clause of section 29 of "The Bengal Survey Act, 1875," and after they have been so assigned, the provisions of sections 19, 20, and 52 to 57 (both inclusive) of the said Act shall apply to such boundary marks.

PART X.

MISCELLANEOUS.

Any point may be referred to arbitration.

127. The Deputy Collector, with the consent of all the parties concerned, may refer to arbitration any point arising in the course of a partition; and the provisions of sections sixty-five and sixty-seven shall, as far as possible, be applicable to such references.

Case of proprietor who has created a tenure.

128. If any proprietor of an estate held in common tenancy and brought under partition in accordance with the provisions of this Act shall have given his share or a portion of it in patni or other tenure or lease, such tenure or lease shall hold good, as regards the lands finally allotted to the share of the lessor, and only as to such lands.

Illustrations.

I.—A, the proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a patni tenure of the whole of his interest in the estate, entitling B, as long as such estate is held in common tenancy, to collect one-fourth of the rent payable by every ryot on the estate;

Partition of the said estate is made under this Act, and certain specific lands are assigned to A as his separate estate;

B will become patnidar of the entire separate estate which has been assigned to A, and will be entitled to collect the whole of the rents from the ryots on that estate.

II.—A, the proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a patni tenure of one-half of his share in the estate, entitling B, as long as such estate is held in common tenancy, to collect one-eighth of the rent payable by every ryot on the estate;

Partition of the estate is made under the Act, and certain specific lands are assigned to A as his separate estate;

B will become patnidar of one-half of A's separate estate, and will hold his patni in common tenancy with the half of A's interest which A has not given in patni, so that B will be entitled to collect one-half of the rent payable by every ryot on A's estate, and A will be entitled to collect the other half.

Two estates may be united.

129. If two or more estates shall come into the possession of one proprietor or of the same body of proprietors, such proprietor or body of proprietors after being recorded as proprietors, may apply to have such estates united, and to hold them as a single estate.

130. Such application shall be made in writing to the Collector, and the Collector shall, not less than thirty days after the issue of a notification of such application (provided he see no objection), comply with the same, and cause the necessary entries to be made in the records of his office, and shall report the case to the Commissioner.

Application for such union how to be made, and how to be dealt with.

131. Whenever any separate estate created under this Act shall fall in arrear so as to require a sale of the land for the discharge of the arrear at any period within twelve years of the date of the confirmation of the partition, the Collector shall, if possible, ascertain the cause of the estate having fallen into arrear, and shall enquire whether such arrear has been caused by any fraudulent or erroneous allotment of the assessment or assignment of lands at the time of the partition, and shall make a report upon the case to the Commissioner for such action as the Commissioner may think proper.

Cause of sale of a separate estate for arrears to be ascertained.

132. If it shall be proved to the satisfaction of the Lieutenant-Governor at any time within twelve years from the date of the final confirmation of a partition by the Commissioner or by the Board, as the case may be, that through any fraud or error at the time of making the partition the assets of the lands assigned to any separate estate were not in proportion to the amount of land revenue for which such estate was made liable, or that the amount of land revenue assessed on any separate estate was not in proportion to the assets of the lands assigned to such estate, the Lieutenant-Governor may order a new allotment of the land revenue upon the separate estates in accordance with the principles prescribed in this Act, on an estimate of the assets of each such estate as they stood at the time of the partition, such estimate being made on such evidence and information as may be procurable respecting the same.

In certain cases Lieutenant-Governor may order a new allotment of the land revenue.

133. Whenever the Lieutenant-Governor shall pass an order for the re-allotment of the land revenue on any separate estate under the last preceding section, the Lieutenant-Governor may direct that the proprietors whose estates are found to have been under-assessed shall, for each year during which they have held possession of the separate estates, be required to pay to the recorded proprietors of the estates which have been over-assessed, a sum equal to the annual amount in which the latter shall be found to have been over-assessed, and in default of payment the amount shall be leviable as provided in section one hundred and thirty-eight.

Under-assessed estates to make refund to over-assessed estates.

No order passed by the Lieutenant-Governor under this section shall be liable to be contested in any Court.

134. Every notification required to be published in and by this Act shall, unless it is otherwise specially directed, be published by posting up copies of the same at the office of the Collector, and of the Deputy Collector who is making or has made the partition, at the mâl cutcherry or mâl cutcherries (if any) of the proprietors of the parent estate, and at one or more of the principal villages on the said estate.

Publication of notifications under this Act.

Service of notice.

135. Every notice in and by this Act required to be served on any person may be served—

(1) by delivering the same to the person to whom it is directed, or, on failure of such service, by posting the same on some conspicuous part of the house in which the said person usually resides,

or by delivering the said notice to a general agent of the person to whom such notice is directed, or to any person who has been appointed in that behalf, or who has been appointed. an agent of the person to whom the notice is directed for the general purposes of any partition under this Act; or

(2) by sending a registered letter containing such notice directed to the said person at his usual place of abode or to the place where he may be known to be residing; or

(3) by posting a copy of the notice at any mâl cutcherry of the person to whom the notice is directed;

or, if no such mâl cutcherry be found, and if the notice cannot be served in any of the other modes mentioned in this section, on some conspicuous place on the estate to which such notice relates.

In all cases where two or more persons are joint applicants for the separation of an estate to be held by them jointly as a separate estate, service of notice under this section on any one such joint applicant shall be deemed to be good and sufficient service on each and all of such joint applicants.

No proceedings under this Act to be affected by any mistake or misdescription.

136. Provided the directions of this Act be in substance and effect complied with, no proceedings under this Act shall be affected by reason of any mistake or by reason of any other informality, unless any person has suffered, or is in danger of suffering, material injury in consequence of such mistake or informality;

and no proceedings under this Act shall be affected by reason of the omission to issue any notification required by this Act, or to serve any notice on any person whose name is not recorded on the Collector's registers as proprietor of the estate in respect of which the notice is, required to be served.

Fine in case of non-compliance with notice or requisition.

137. If any proprietor or other person shall fail to comply within the time fixed by a notice served on him as by this Act provided, with any requisition made upon him under this Act by the Collector or Deputy Collector, the Collector or Deputy Collector may impose upon him such daily fine as he may think fit, not exceeding fifty rupees;

and such fine shall be payable daily until the requisition is complied with,

and the Collector or Deputy Collector may proceed from time to time to levy the amount which has become due in respect of any such fine, notwithstanding that an appeal against the order imposing such fine may be pending;

Provided that, whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the

case specially to the Commissioner, and no further levy in respect of such fine shall be made otherwise than by authority of the Commissioner.

NOTE.—This section "must be held to apply in all butwarra cases." (Board's No. 363A, dated 14th August 1880.)

Fees, &c., to be deemed a demand under Bengal Act VII of 1868.

138. Except as herein expressly otherwise provided, all fees, fines, costs, and other sums ordered to be paid by any person under this Act, shall be deemed to be demands under* section 1 of Bengal Act VII of 1868 (*an Act to make further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue*), and shall be leviable as such.

* Repealed from this word to the end of this section. *See* the first schedule of Act VII (B.C.) of 1880 and section 7 (3) of that Act.

Power of Collector to enforce attendance of witnesses.

139. For the purpose of any enquiry under this Act, the Collector and Deputy Collector shall, in addition to every power conferred specially by this Act, have power to summon and enforce the attendance of witnesses, to examine witnesses, and to compel the production of documents by the same means (as far as may be), and in the same manner as is provided in the case of a Court under the Code of Civil Procedure.

NOTE.—Chapter XIV of the Code of Civil Procedure (Act XIV of 1882), viz. *of the Summoning and Attendance of Witnesses*, is here inserted at length for facility of reference.

Summons to attend to give evidence or produce documents.

159. The parties may, after the summons has been delivered* or sent* for service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit, obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such settlement or disposal, as the case may be, summons to persons whose attendance is required either to give evidence or to produce documents.

Expenses of witnesses to be paid into Court on applying for summons.

160. The party applying for a summons shall, before the summons is granted and within a period to be fixed by the Court, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

Scale of expenses.

If the Court be subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority.

Tender of expenses to witness.

161. The sum so paid into Court shall be tendered to the persons summoned, at the time of serving the summons, if it can be served personally.

Procedure where insufficient sum paid in.

162. If it appear to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons, or the Court may discharge the person summoned without requiring him to give evidence, or may both order such levy and discharge such person as aforesaid.

Expenses if witness detained more than one day.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned; or the Court may discharge

* These words in section 159 have been inserted by Act VII of 1888, section 15.

the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Time, place, and purpose of attendance to be specified in summons.

163. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

Summons to produce document.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he cause such document to be produced instead of attending personally to produce the same.

Power to require persons present in Court to give evidence.

165. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

Summons how served.

166. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the defendant; and the rules contained in Chapter VI as to proof of service shall apply in the case of all summonses served under this section.

Time for serving summons.

167. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Attachment of property of absconding witness.

168. If the serving officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court* shall if the certificate of the serving officer has not been verified by affidavit, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court* touching the non-service: and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment, and of the fine which may be imposed under section 170:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

If witness appears attachment may be withdrawn.

169. If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

Procedure if witness fails to appear.

170. If such person does not appear, or appearing fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine not exceeding five

* These words in section 168 have been substituted by Act VII of 1888, section 16.

hundred rupees as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

Court may of its own accord summon as witnesses strangers to suit.

171. Subject to the rules of this Code as to attendance and appearance, and to the provisions of the Indian Evidence Act, I of 1872, if the Court at any time thinks it necessary to examine any person other than a party to the suit and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Duty of persons summoned to give evidence or produce document.

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

When they may depart.

173. No person so summoned and attending shall depart unless and until (*a*) he has been examined or has produced the document and the Court has risen, or (*b*) he has obtained the Court's leave to depart.

Consequences of failure to comply with summons.

174. If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 173, the Court may order him to be arrested and brought before the Court. Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure. When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

Explanation.—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in section 160 shall be deemed a lawful excuse within the meaning of this section.

Procedure when witness apprehended cannot give evidence or produce documents.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and on such bail or security being given, may release him.

Procedure when witness absconds.

175. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169, and 170 shall, *mutatis mutandis*, apply.

Persons bound to attend in person.

176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

(*a*) Within the local limits of its ordinary original jurisdiction, or

(*b*) Without such limits and at a place less than fifty or (where there is railway communication for five-sixths of the distance between the place where he resides and the place where the Court is situtuate) two hundred miles distance from the Court-house.

Consequence of refusal of party to give evidence when called on by Court.

177. If any party to a suit present in Court refuses without lawful excuse, when required by the Court, to give evidence or to produce any document then any there in his actual possession or power, the Court may in its discretion either pass a decree against him, or make such order in relation to the suit as the Court thinks fit.

178. Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witness contained in this Code shall apply to him so far as they are applicable.

Rules as to witnesses to apply to parties summoned.

140. All powers and functions which are assigned by this Act to a Deputy Collector may be exercised and discharged by the Collector; and whenever it is provided by this Act that any act done, or order made by a Deputy Collector shall require the sanction of the Collector, or shall be appealable to the Collector, if such act shall have been done or such order shall have been made by the Collector, it shall be deemed to have been sanctioned by the Collector or to have been confirmed by the Collector in appeal, as the case may be.

Powers and functions assigned to Deputy Collector may be exercised by Collector.

141. The Lieutenant-Governor may vest any Collector or Deputy Collector with all or any of the powers which, under the provisions of any law for the time being in force, might be exercised by them respectively, or might be conferred on them respectively, if they were making a settlement of the parent estate.

Government may vest Collector or Deputy Collector with certain powers.

Such powers may be conferred either generally in respect of all estates in the partition of which the Collector or Deputy Collector may at any time and in any district be engaged, or specially in respect of any particular estate.

142. An appeal, if presented within one month from the date of the order appealed against, shall lie to the Collector against every order of a Deputy Collector—

Appeal to the Collector.

(*a*) directing, under section forty-one, by whom the costs of an enquiry held in consequence of an objection preferred shall be paid;

(*b*) accepting or adopting any papers under section sixty-three for the purposes of a partition;

(*c*) refusing, under section sixty-eight, to confirm a partition made by the parties or by arbitrators;

(*d*) fixing, under section eighty-nine, the limits of land and the rent to be paid for it in perpetuity;

(*e*) refusing, under section one hundred and four, to make a partition as applied for by the joint applicants;

(*f*) passed under section one hundred and ten in respect of lands held rent free, or under section one hundred and eleven in respect of lands included in a tenure;

(*g*) imposing a fine under section one hundred and thirty-seven.

143. An appeal, if presented to the Commissioner, or to the Collector for transmission to the Commissioner, within one month from the date of the order appealed against, shall lie to the Commissioner against every order of the Collector (whether such order be passed by the Collector in the first instance, or in appeal from the order of a Deputy Collector)

Appeal to the Commissioner.

(*a*) having the effect of rejecting an application for the partition of an estate, or for the separation of a share, or of putting an end to proceedings for effecting a partition or separation after the application has been admitted;

(*b*) directing, under section thirty-one, that an application for partition or separation be admitted;

(*c*) accepting or adopting any papers under section sixty-three for the purposes of a partition;

(*d*) refusing, under section sixty-eight, to confirm a partition made by the parties or by arbitrators;

(*e*) setting aside, amending, or approving the general arrangement of the partition under section seventy-five;

(*f*) approving, with or without amendment, a partition made by a Deputy Collector, or directing such partition to be amended or a fresh partition to be made, or making a fresh partition under section eighty-one;

(*g*) fixing, under section eighty-nine, the limits of land and the rent to be paid for it in perpetuity;

(*h*) refusing, under section one hundred and two, to allow a partition to be made in accordance with an existing private division;

(*i*) passed under section one hundred and ten in respect of lands held rent-free, or under section one hundred and eleven in respect of lands included in a tenure;

(*k*) approving or disallowing, under section one hundred and fourteen, the allotment to the estate under partition of a portion of lands held in common tenancy between the proprietors of such estate and the proprietors of one or more other estates;

(*l*) passed under section one hundred and sixteen as to disputes or doubts regarding land;

(*m*) imposing or confirming the imposition of a fine under section one hundred and thirty-seven;

(*n*) imposing any fine amounting to more than fifty rupees, or directing the payment of any costs amounting to more than fifty rupees.

Appeal to the Board.

144. An appeal, if presented to the Board, or to the Commissioner for transmission to the Board, within six weeks from the date of the order appealed against, shall lie to the Board against every order of the Commissioner which confirms, modifies, or reverses any order of the Collector

(*a*) having the effect of rejecting an application for the partition of an estate, or for the separation of a share, or of putting an end to proceedings for effecting a partition or separation after the application has been admitted;

(*b*) directing, under section thirty-one, that an application for partition or separation be admitted;

(*c*) accepting or adopting any papers under section sixty-three for the purposes of a partition;

(*d*) approving or disallowing, under section one hundred and fourteen, the allotment to the estate under partition of a portion of lands held in common tenancy between the proprietors of such estate and the proprietors of one or more other estates;

and against every order of the Commissioner.

(*e*) directing, under section forty, that any proprietor shall pay more than his proportionate share of the expenses of a partition, when the excess which he is ordered to pay exceeds five hundred rupees;

(*f*) directing, under section one hundred and thirteen, that any sum shall be paid by the proprietor of an estate other than the estate under partition, when such sum exceeds five hundred rupees;

(*g*) confirming, under section one hundred and eighteen or section one hundred and twenty, or amending or setting aside, under section one hundred and twenty, a partition as made by the Collector;

(*j*) imposing, or confirming the imposition of any fine amounting to five hundred rupees, or ordering or confirming an order directing the payment of any costs amounting to more than five hundred rupees.

NOTE 1.—There is no appeal, as of right, to the Board under this section against the order of a Commissioner in connexion with orders passed by the Collector under section 75 as to the general arrangement of a partition. Against such orders appeals are not admitted on the Board's file except on special cause shown. (Board's Proceedings of 19th March 1886, No. 113, Collection 7, File 118.)

NOTE 2.—A dispute as to the rent of one small plot of land was not considered as bringing the case within clause (c) of this section. *Primâ facie* there were no special grounds shown for any interference by the Board under section 145. (Board's Proceedings of 8th May 1886, No. 50 Collection 7, File 189.)

NOTE 3.—There is no appeal, as of right, to the Board from an order of the Commissioner against an order of the Collector under section 116 of the Act as to disputes or doubts regarding land. (Board's Proceedings of 30th July 1887, No. 80, Collection 7, File 251.)

NOTE 4.—This section was held not to apply to proceedings which had been finally completed under Regulation XIX of 1814. (Board's Proceedings of 25th August 1888, No. 64, Collection 158, File 7.)

No appeal to lie against any order passed under this Act.

145. Except as provided in the three last preceding sections, no appeal shall lie as of right against any order passed under this Act by any officer; but the proceedings and orders of every Deputy Collector under this Act shall be subject to the supervision and control of the Collector; the proceedings and orders of every Deputy Collector and of the Collector to the supervision and control of the Commissioner; and the proceedings and orders of all revenue officers to the supervision and control of the Board;

and any order passed and anything done under this Act may be modified, amended, or reversed by the supervising and controlling authority at any time before possession of their respective separate estates has been given to the several proprietors as provided in section one hundred and twenty-three, but not after such possession has been given except as provided in the next succeeding section.

NOTE.—A Commissioner, without going into the merits of a case, decided on appeal a preliminary objection, and against his order an appeal was preferred to the Board. It was held that, apart from the fact that the parties agreed to the Board's entering into the merits of the case, this section fully authorized the Board to do so, when dealing with the appeal regarding the preliminary objection. (Board's Proceedings of 20th February 1886, No. 97, Collection 2, File 630.)

Proceedings connected with giving possession may be set aside within three months of date of giving possession.

146. Any proceedings of a revenue officer connected with giving possession to the proprietors of their respective separate estates as provided in section one hundred and twenty three may be set aside or amended as above provided by any supervising and controlling revenue authority, provided that such supervising and controlling authority shall, within three months of the date on which such

possession may have been given, make an order to the effect that such proceedings are under the consideration of such authority.

Such order shall be communicated to the Collector of the district, who shall cause the same to be published by notification in the manner prescribed by section one hundred and thirty-four.

NOTE.—At the time of giving possession, the Amin proceeded to divide the trees standing on the estate among the several proprietors, whereupon an objection was raised by certain sharers to the effect that the trees standing on their plot should be left entirely in their sole possession, as they should go with the lands on which they stood. The Deputy Collector held that the value of the trees had not been included in the assets of the land according to the practice there in vogue, and that they should therefore be separately divided among the parties. The Collector confirmed this order, dismissing the appeal. Against the above orders an appeal was preferred to the Commissioner, who decreed it on the ground that it would be impossible to put one proprietor in possession of a certain plot of land, and to put other proprietors in possession of different trees which were growing upon that plot of land. On appeal this view was upheld by the Board as in accordance with fairness and common sense. (Board's Proceedings of 27th March 1886, No. 46, Collection 7, File 1485.)

Orders as to costs on appeal.

147. The Commissioner and the Board may pass such orders as they shall think fit in respect of the payment of costs of any appeal which is made to them respectively under this Act.

NOTE.—A pleader, who was engaged in a partition case, having taken 20 years' purchase as the valuation of his claim for his fee, the question how the valuation should be made in partition cases in Revenue offices was referred to the Board, who pointed out that in partition proceedings before Revenue officers in calculating such fees the rules prescribed by the Board under the Legal Practioners' Act XVIII of 1879 should be observed. (Board's Proceedings of 19th May 1883, No. 23, Collection 7, File 221.)

Powers of officers exercising jurisdiction under this Act with regard to false evidence.

148. If, in any case in which a Collector or other officer shall exercise jurisdiction under this Act, any person is guilty of the offence of giving or fabricating false evidence, or of forgery, as defined in the Indian Penal Code, or of abetting any of those offences, such Collector or other officer shall have the same powers in respect of such offence, and of the person charged with committing the same, as are vested by the Code of Criminal Procedure in a civil court, when any such offence is committed before or against such court, or when a document believed to be a forgery is given in evidence in any proceedings in such court.

Orders of revenue officer which are not liable to be set aside by civil suit.

149. No order of a revenue officer

(*a*) refusing to allow a partition on the grounds mentioned in section eleven;

(*b*) rejecting or directing to be amended an application under section twenty;

(*c*) made under the first clause of section thirty-two;

(*d*) made under Part IV, Part V, Part VI, Part VII, Part VIII (except as provided in the next succeeding section), or Part IX.

(*e*) imposing a fine;

(*f*) in respect of the payment of costs of any appeal under section one hundred and forty-seven,

shall be liable to be contested or set aside by a suit in any court, or in any manner other than as is expressly provided in this Act.

When suit may be brought to set aside order of revenue officer.

150. Notwithstanding anything contained in clause (*d*) of the last preceding section,

any person claiming a greater interest in any lands which were held in common tenancy between two or more estates than has been assigned to him by the order of a revenue officer under section one hundred and twelve or section one hundred and fourteen;

and any person who is aggrieved by any order of a revenue officer passed under section one hundred and sixteen;

may bring a suit in a court of competent jurisdiction to modify or set aside such orders of the revenue officer.

Board to be guided by instructions of Lieutenant-Governor.

151. In the execution of the duties vested in the Board by this Act, the Board shall be guided by such order or instructions as they may from time to time receive from the Lieutenant-Governor.

Board may lay down rules.

152. The Board may, from time to time, make rules, not being inconsistent with this Act—

(*a*) to regulate the expenses of effecting partitions, or the amount of fees to be levied in respect of partitions, the allotment of the same among the proprietors, and the instalments in which, and the times at which, the same shall be levied under Part IV;

(*b*) to regulate the receipts, disbursements, and management of any "Estates' Partition Fund" formed under section forty-five;

(*c*) to regulate the employment and remuneration of amins and other subordinate officers appointed under Part IV, to enable the officer making the partition to keep himself informed of the proceedings of such officers, and to exercise a proper control over them;

(*d*) to regulate the form in which the partition papers shall be framed under section sixty-six and section seventy-seven;

(*e*) and generally for the guidance of officers in conducting partitions under this Act.

SCHEDULE.

See Section 2.

Number and year.	Subject or abbreviated title.	Extent of repeal.
Regulation XI of 1811	For extending period of revising jumma on certain lands.	So much as has not been repealed.
Regulation XIX of 1814 ...	Consolidating Regulations respecting Partition of Estates.	Ditto.
Act XX of 1836	Quashing of Butwarras	Ditto.
Act XI of 1838	Remuneration of persons effecting a partition.	Ditto.

"1A. Before publishing the notification under section 21, the Collector shall record a proceeding, specifying under which of the clauses of section 9 the application and the office reports on it show the case to fall, and certifying that the case is not barred, so far as appears from the above papers, under sections 10 or 12 of the Act." 7-5-93.

"service." 6-3-95.

RULES

UNDER SECTION 152 OF ACT VIII (B. C.) OF 1876, FRAMED BY THE BOARD FOR THE GUIDANCE OF OFFICERS IN CONDUCTING PARTITIONS UDDER THAT ACT.

Manner of publishing and serving notices, &c.

1. All notifications under this Act shall be published, and all notices shall usually be served, by means of the nazirs' peons, fees being charged on the scale prescribed for the service of non-judicial processes and denoted in the usual way by adhesive stamps. When a notice is served by post under section 135, clause 2, the actual cost of postage only shall be charged and denoted upon the cover in postage stamps. Service labels should not be used.

Prepayment of fees.

2. Before publishing a notification under section 21 and issuing a notice under section 22, the Collector shall require the proper amount of fees to be paid by the applicant under section 17. If the application is admitted under section 31, the fees thus paid will be included in the expenses of partition under heading *b* of sections 44 and 49, and the expense incurred in the publication of this notification and service of this summons should be taken as a basis for the calculation of the expense to be incurred on account of the other notifications and notices which are required by the Act.

Payment of costs of partition by instalments.

3. Under section 39 the estimated cost of a partition shall be paid in not less than three instalments, of which the first shall consist of one-half of the total amount estimated. The first instalment should be demanded by the Collector as soon as the estimate required by section 39 has been passed by the Collector, and the remaining instalments at such times as the Collector may think fit. Every instalment shall be paid within one month from the date on which a demand for it shall have been served upon the person or the accredited agent of the person from whom it is due, and, in the event of non-payment within one month from such date, the Collector shall proceed to levy the amount under section 138.

Proportional debit of certain costs to estates

4. The cost of peshkars and other superior officers employed by the Collector under the latter part of section 37 shall be borne by the several estates for whose benefit they are employed in proportion to the amount of the sudder jumma of each estate.

and of certain establishments.

5. The yearly cost in any district of an establishment employed under section 38, and of any Deputy Collector employed under section 43, shall be borne by all estates for the time being under partition in the said district in proportion to the amount of the sudder jumma of each estate. Similarly, the yearly cost of an establishment employed under section 38 in the office of any Commissioner will be borne by the estates under partition in his division in proportion to the amount of the sudder jumma of each estate.

6. At the commencement of each year the Collector shall submit to the Commissioner, in duplicate, a list of all estates under partition in his district, with the amount of their respective sudder jummas, and the Commissioner shall then determine the amount to be borne under rule 8 by each estate on account of the establishment employed in his office under section 38, and enter the same in the several district lists, returning one copy of each to the Collector by whom it was submitted.

List of estates under partition to be prepared annually.

7. Estimates under section 44 shall be prepared in the Form, A, annexed :—

Preparation of estimates.

(*a*)—In estimating the probable cost of the measuring establishment required, careful consideration should be given not only to the size of the estate, but also to its compactness or the reverse, the number of separate shares to be formed, and similar circumstances. It should be borne in mind that in cases where no superior officers are employed under the latter part of section 37, and where there is no district establishment under section 38, it may be necessary to retain the services of the amin, not only for measurement, but until the proceedings of the partition are completed by the Collector.

NOTE.—In certain districts of the Patna Division the Board have sanctioned the employment of amins permanently on fixed salaries as mohurrirs in the offices of the Butwarra Deputy Collectors to prepare measurement papers, maps, rent-rolls, &c., and other office work, leaving the field-work to be performed by extra amins for so long as they are required. The establishments are sanctioned from year to year. (Board's Proceedings of 22nd May 1886, No. 98, Collection No. 10, file No. 216.)

Contingent expenses.

(*b*)—Under the head of contingent expenses provision should be made for the service of the notices and the publication of the notifications likely to be required.

8. The Board, under section 46, direct that, until further orders, the charges on account of partitions in districts where an Estates' Partition Fund is established shall be levied according to the estimate in each case as provided in sections 39 and 40, subject to final adjustment under section 42, the salary of any Deputy Collector who may be appointed under section 43 being included under the head of special district establishments.

Levy of charges for partitions.

9. The following maximum scale of charges has hitherto been in force :—

	Rs.
Up to 200 acres	36 per 100 acres.
From 200 to 300 acres	30 ,, ,,
From 300 to 500 ,, ...	18 ,, ,,
In excess of 500 ,, ...	10 ,, ,,

Whenever the estimate for the partition exceeds this scale of charges, the Collector shall record a proceeding explaining the cause of the excess.

Forms of khatians and khasras.

Rules under the Tenancy Act should be used, omitting the columns relating to rent settled and special incidents of the tenancy, and the rules for filling up those forms should be adhered to as closely as the circumstances permit.

Time to be prescribed.

"15. Before an amín is deputed to make measurements, the Deputy Collector or other superior officer in charge of the partition shall prescribe the time within which the measurement is to be completed. He may also prescribe the time within which any portion of the measurement is to be completed. He should from time to time call for progress reports, and insist on their punctual submission. The following or some similar form may be adopted :—

1. Total area allotted to amín for survey.
2. Surveyed up to date and covered by last report.
3. Surveyed during the period under report.
4. Total area surveyed.
5. Area which should have been surveyed according to the scale laid down by the Deputy Collector.
6. Explanation of any deficiency.

Advances to be granted.

"16. The whole remuneration of an amín should not be paid to him until his papers have been examined and passed as correct. The officer in charge of the partition should see that the amín is not permitted to remain on the estate without reason or make unnecessary delay in filing his papers. Advances not exceeding two-thirds of the remuneration earned may from time to time be given at the discretion of the officer in charge of the partition. He will be responsible for seeing that no unreasonable delay occurs in examining the amín's work and settling his accounts.

The same rule applies, *mutatis mutandis*, to peshkárs and other officers.

Instruments.

"17. The instruments required by the amíns are described on page 86 of the Survey Manual, and may be indented for from the Mathematical Instrument Department.

Measurements to be tested.

"18. It is expected that, in all but unimportant cases, the officer in charge of the partitions hould visit the estate and test the measurement and other records generally following (so far as it applies) the procedure prescribed for the guidance of Settlement Officers.

Survey records to be utilised.

"19. Whenever a professional or other trustworthy survey or record of rights has been made, the Collector will see that it is utilised so far as may be possible. He will also bear in mind that whenever a record of rights and settlement of rents have been made, these are binding on all parties so long as they are in force, and must be accepted as the basis of partition. In such cases it will be merely necessary to bring the records up to date and to assess for the purposes of the partition such lands of the estate as have not been assessed by the Settlement Officer." 10-6-92.

"9. The following maximum scale of charges, including expenses of all kinds (*i.e.*, amín's fees, cost of instruments and other contingencies, cost of supervision, &c.), is prescribed for guidance:—

Scale of charges.

First 100 acres	...	1 rupee per acre,
Second 100 „	...	14 annas „
Third 100 „	...	12 „ „
Fourth and fifth 100 acres	...	10 „ „
Sixth 100 acres	...	8 „ „
All subsequent 100 acres	...	8 „ „

and a fee of Re. 1 per day to the amín for every day he is engaged subsequently on local enquiries and reports.

If the Collector should consider in any case that a higher scale is required, he must report the exceptional circumstances to the Commissioner for sanction. If the excess is more than 25 per cent. of the ordinary scale, or amounts to more than Rs. 1,000 in all, the Commissioner will report the case for the orders of the Board.

"10. As a general rule amíns appointed to make measurements in partition cases must be capable of surveying with the plane-table and chain according to the system described in the Board's Survey Manual, Chapter VIII, and Appendix V to that Manual.

Qualifications of Amíns.

[NOTE.—It should always be possible to procure amíns possessing these qualifications in Bihár, Orissa and the districts of Eastern Bengal, in which there have been professional surveys on a large scale. Amíns not possessing these qualifications are not to be employed without the special sanction of the Board.]

"11. Peshkárs employed to supervise or check the work of amíns must always be qualified as amíns, and should ordinarily have acted as amíns in practical surveys.

Qualifications of Peshkárs.

"12. The rates to be paid to amíns should be so fixed as to allow those officers not less than Rs. 30 per mensem, exclusive of the wages of chainmen, of whom three will be required for each amín, and of other contingent charges. For this remuneration an amín will ordinarily be expected to survey and prepare the measurement papers of 200 acres a month. For other work connected with partitions, such as enquiry into objections, the remuneration to be allowed should be as nearly as possible analogous.

Rates to be paid.

In the case of petty estates, such as would occupy an amín less than a month, the Collector may at his discretion allow the amín a rupee per diem.

"13. In reckoning the remuneration of an amín, a reasonable time must be given for going to and from the estate.

Reckoning of remuneration.

"24A. Early in April of each year the Commissioner will prepare an account of the total actual expenditure incurred during the last official year on account of the butwara establishment entertained in his office, and apportion it among the several districts in his division, and will communicate these figures to the district officers concerned for insertion in their Partition Fund accounts, and abstract annual statements of Partition Fund which should be prepared under section 48 of the Estates Partition Act, VIII (B.C.) of 1876, with a note that the amount was drawn by him direct from the treasury. Copy of this account will also be furnished to the Accountant-General, Bengal, for adjustment of the Partition Fund accounts of each district in his office." 9-11-94.

25A? "15A. At the close of each financial year, the Collectors should submit through the Commissioners to the Board a statement in the form of Return XXVIIA in the Appendix, showing the expenditure incurred and the average cost per acre of the land partitioned in their districts." 2-9-90.

Return of average cost.

NOTE.—The scale herein laid down is intended to include all the costs of partition as defined in the law. With regard to the question as to how the scale of charges in this rule is to be interpreted, it has been explained that (*e.g.*) Rs. 36 per 100 acres is the maximum charge, and of course if the area is considerably less than 100 acres, and the full maximum allowance will not be required, only so much should be included in the estimate and sanctioned as will be really necessary (Board's Proceedings of 29th May 1880, No. 159, Collection 7, File 767).

Supplementary estimates.

20. ~~10.~~ Whenever the amount first estimated for any partition is found to be insufficient, a supplementary estimate in the same form A as the original estimate may be passed by the Collector. Two or more supplementary estimates may, if necessary, be made. Rules 7 and 8 apply to supplementary as well as to original estimates.

Special proceedings as to costs.

21. ~~11.~~ Any special proceedings as to costs under sections 40-41 should be reported to the Commissioner of the division, and should be specially mentioned in the final report of the partition.

Abstract of Fund.

22. ~~12.~~ The abstract of the Estates' Partition Fund required by section 48 shall be in the form, B, annexed.

Ledger form.

General Register of receipts, &c.

23. ~~13.~~ In order to check the expenditure incurred in each case, an account should be kept up in each district in which any estate is under partition in Ledger form (see Appendix), showing separately in opposite columns the receipts and disbursements on account of each separate estate. Besides this book a general register of receipts and disbursements on account of the Estates' Partition Fund generally should be kept up in every district in which such a fund has been established.

Partition paper.

24. ~~14.~~ The partition paper referred to in section 77 shall be drawn up as nearly as possible in the form, C, annexed.

Progress Form.

25. ~~15.~~ A Progress form, D, has been prescribed by the Board, for adoption in certain districts, to show the progress made in the disposal of Butwarra cases during a quarter, as compared with the two preceding quarters.

Security, and bond.

26. ~~16.~~ Security for the faithful discharge of their duties may, when the Collector thinks this necessary, be taken from amins and peshkars. When security is taken, the bond should be registered, and the registration fee should be treated as forming part of the contingent expenses of the partition. The amin and peshkar shall submit a report once a month, or more frequently if the Collector thinks fit in any case, showing the progress made in the partition proceedings of each case.

Commencement of separate liability of new estates.

27. ~~17.~~ The most convenient date to be fixed under section 123 as that from which separate liability of the new estates will commence will be the day following the next latest day for the payment of revenue. The Collector should therefore endeavour to arrange the date for making over possession in such a way that it may be possible to fix a latest day of payment in the notice consistently with the provisions of section 124. It will be seen that, even at this stage of the case, after possession has been given, a sale of the parent estate for arrears will render all partition proceedings null and void (section 15).

No fee on completion of partition.

29. ~~18.~~ Regulation XV of 1797 having been repealed, no fee is now leviable on the completion of a division except the stamp on which the partition paper has to be engrossed.

Entry in roll of new estates.

29. ~~19.~~ The mode in which the newly-formed estates are to be entered on the Roll is described in Chapter IV, Section VII of the Board's Rules, 1888. Register 2 contains a column for the General Register numbers of the newly-formed estates, and if this column is properly filled up, there can be no danger of the separated shares being lost sight of.

30 ~~20.~~ A partition case will be kept upon the Collector's file—

(i) until any appeal against the proceedings of the Revenue officers under section 123 has been decided, or until three months have elapsed without any order being made under section 146 ;

(ii) until the date prescribed in the notice for the commencement of separate liability has elapsed and the Towjih Navis has certified that the joint estate is not in arrears, or, if in arrears, until the arrear has been recovered ;

(iii) if any expenditure has been incurred in the construction of boundary marks under section 126, until the cost of erecting such boundary marks has been recovered.

On these three conditions being fulfilled, the partition will be treated as completed and the case removed from the file.

Objections in certain cases.

31. ~~21.~~ The law (section 116) appears to contemplate that objections to the effect that lands under division do not form part of the parent estate will be made before the partition has been approved by the Collector under section 81. It is possible, however, that objections worthy of consideration may be made at a later stage ; but such objections should not be entertained after a partition has been finally confirmed under section 122. The objectors should be referred for their remedy to the Civil Court.

Order-sheet.

32. ~~22.~~ With a view to ensure the personal attention of Revenue Officers to the proper making up of the record of a partition case, and to enable them to see at once the progress of every such case from its institution to its close, the Board have directed an Order-sheet to be attached to each record: See Circular Order No. 6 of January 1889 in the Appendix.

Forms.

33. ~~23.~~ The numerous forms of notices, &c., in use in butwarra proceedings are not printed and supplied by the Superintendent of Stationery. It has been ruled that, as a Butwarra pays its own expenses, the notices, &c., should be issued in manuscript, the cost being met in the same way as other charges connected with butwarras. As it is within the competency of a Commissioner to sanction any butwarra charge, a Commissioner has been authorised to have the forms printed at a local press, apportioning the expenditure to all the estates under partition. Many of the forms given in the Appendix have long been in use in the Patna Division: others have now been prepared for the first time. The adoption of these forms is not ordered by the Board, but it is probable that they will be found useful.

A.

[*See Rule* 7.]

I.—*Statement showing the estimated cost of partition to be levied under section* 39 *of Act VIII* (B.C.) *of* 1876.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Number of estate in register.	Name of estate.	Registered proprietors.	Government revenue.	Area by survey, or, if the district has not been surveyed, the estimated area.	Name of estate and revenue at the period of the decennial settlement.	Petitioner's name.	Shares into which it is at present proposed to divide the estate, with the names of the respective proprietors.	Names of peshkars and amins employed, and time likely to be taken up in measurement and other proceedings under section 54.	Rate of pay and total cost of establishment shown in column 10.	Yearly and total cost of contribution towards establishments employed under the latter part of section 37.	Yearly and total cost of contribution towards district establishments employed under sections 38 and 43.	Yearly and total cost of contribution towards divisional establishments employed under section 38.	Other expenditure likely to be incurred (if any) in detail.	Total estimated cost of partition (columns 11 to 14).	Apportionment of cost to each proprietor.	Instalments and times at which it is proposed to levy the cost.	REMARKS.

B.

[*See Rule* 12.]

Abstract of the Partition Fund of district , *for the year* , *prepared as required by Section* 48 *of Act VIII* (B.C.) *of* 1876.

Receipts.	RS. A. P.	*Disbursements.*	RS. A. P.
Balance in hand on 1st April 18		Contribution towards establishments employed in the Commissioner's Office under section 38 of the Act.	
Received on account of estate		Salary of Deputy Collector employed under section 43 of the Act.	
		Salary of district establishment employed under section 38 of the Act.	
		Cost of establishments employed under section 37 of the	
		"Pension and leave allowances." 16-10-96.	
		Contingent expenditure	
		Balance in hand on 31st March 18	
Total ...		Total ...	

C.

[*See Rule* 14.]

Partition Statement of estate *bearing No.* *in the towjih of district* *, prepared as required by section* 77 *of Act VIII* (B.C.) *of* 1876.

1	2				3			4			5			6			7			8	9	10	11			12			13			14	15	16
Names of recorded proprietors.	Quantity of land.				Average rental for one year as per amin's paper.			Average rental for three years from as per patwari's papers, &c.			Other assets, if any.			Sudder jumma of entire estate.			Market-value of entire estate.			Fractional shares of the several proprietors or villages held in severalty or shares in such villages.	Names of proprietors.	Quantity of land assigned to each shareholder.	Produce of each partition as per one year's papers filed by the amin.			Produce of each separate, estate as per three years' papers filed by the patwari.			Jumma of each separate estate.			Towjih number of each separate estate.	Date of Commissioner's confirmation.	REMARKS.
	B.	C.	Ch.	K.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.				Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.			

* The market-value should be ascertained by multiplying the net-profits of the estate by the number of year's purchase which is usually paid in the district for lands of a similar description.

REGISTER OF PROCEEDINGS FOR THE PARTITION OF ESTATES UNDER ACT VIII (B.C.) OF 1876.

REGISTER No.

রেজিষ্টর নং

OF PROCEEDINGS FOR THE PARTITION

১৮৭৬ সালের বঙ্গীয় ৮ আইনানুসারে

NOTE.—If the partition is rejected under section 20 or 23, or if it is quashed by the Commissioner be noted

যদি ২০ কি ২৩ ধারামতে বিভাগ অগ্রাহ্য হয় বা ৩৬ ধারামতে কমিশ্যনর হইলে তাহা ৮ ঘরে

1	2	3	4	5	6
Number. নম্বর।	Name of estate and its number on the roll. মহলের নাম ও তৌজি নম্বর।	Former revenue of the estate. মহলের সাবেক রাজস্ব।	Name of the applicant for partition. বিভাগের প্রার্থির নাম।	Names of the coparceners and extent of their respective shares. শরিকগণের নাম ও তাহাদের প্রত্যেকের অংশের পরিমাণ।	Area in acres of property to be divided. বিভাজ্য সম্পত্তির একর হিসাবের পরিমাণ।

2.

২।

ESTATES UNDER ACT VIII (B.C.) OF 1876.

মহল বিভাগার্থ কার্য্যের রেজিষ্টরী।

under section 36, or if it has been arranged by arbitration under Sections 64 to 70, the fact should in column 8.

কর্ত্তৃক রদ হয় বা ৬৪ হইতে ৭০ ধারামতে সালিসকর্ত্তৃক মীমাংসা হয় তাহা লিখিতে হইবে।

7	8	9	10				
Date of presentation of application to Collector, section 17. কালেক্টরের নিকট দরখাস্ত দিবার তারিখ, ১৭ ধারা।	Date of Collector's order for partition, section 31. বিভাগ জন্য কালেক্টরের হুকুমের তারিখ, ৩১ ধারা।	Number and description of shares into which the partition is to be made, sections 18 and 32. যে২ অংশে বিভাগ হইবে তাহার সংখ্যা ও বিবরণ, ১৮ ও ৩২ ধারা।	Particulars of estimated cost of partition, dates fixed by Collector for payment of instalments and dates on which instalments have been paid, sections 39 and 40. বিভাগের আনুমানিক ব্যয়ের বিবরণ, কালেক্টর কর্ত্তৃক নির্দ্ধারিত কিস্তি দিবার তারিখ ও যে তারিখে কিস্তির টাকা দেওয়া হয়। ৩৯ ও ৪০ ধারা।				
			a Estimated cost under Rule 3 of the Rules. নিয়মাবলীর ৩ নং রুল মতে আনুমানিক ব্যয়।	Date fixed for payment of কিস্তির টাকা_দিবার তারিখ।			
				b 1st instalment. প্রথম কিস্তি।	c 2nd instalment. দ্বিতীয় কিস্তি।	d 3rd instalment. তৃতীয় কিস্তি।	

REGISTER No.

রেজিষ্টর নং

OF PROCEEDINGS FOR THE PARTITION OF

১৮৭৬ সালের বঙ্গীয় ৮ আইনানুসারে

NOTE.—If the partition is rejected under section 20 or 23, or if it is quashed by the Commissioner be noted

যদি ২০ ধারামতে বিভাগ অগ্রাহ্য হয় ৩৬ ধারামতে কমিশ্যনর হইলে তাহা ৮ ঘরে

Particulars of estimated cost of partition, dates fixed by Collector for payment of instalments and dates on which instalments have been paid, sections 39 and 40—*contd.* বিভাগের আনুমানিক ব্যয়ের বিবরণ, কালেক্টরকর্ত্তৃক নির্দ্ধারিত কিস্তি দিবার তারিখ ও যে তারিখে কিস্তির টাকা দেওয়া হয়, ৩৯ ও ৪০ ধারা।			11	12	13
When paid. কোন্ তারিখে দেওয়া হইল।					
e	*f*	*g*			
1st instalment. প্রথম কিস্তি।	2nd instalment. দ্বিতীয় কিস্তি।	3rd instalment. তৃতীয় কিস্তি।	All other costs declared by Collector under section 42 or other sections as chargeable to the estate. ৪২ বা অন্যান্য ধারামতে কালেক্টর মহলের উপর আদায়ের যোগ্য অন্য যে ব্যয় স্থির করেন।	Date of delivery of partition papers and of report of proceedings by Deputy Collector to Collector, section 78. ডিপুটী কালেক্টরের কার্য্যের রিপোর্টের ও বিভাগের কাগজ দিবার তারিখ, ৭৮ ধারা।	Date of approval of partition by Collector, section 81. কালেক্টরকর্ত্তৃক বিভাগ মঞ্জুরের তারিখ, ৮১ ধারা।

2—*continued.*

২।

OF ESTATES UNDER ACT VIII (B.C.) OF 1876.

মহল বিভাগার্থ কার্য্যের রেজিষ্টরী।

under section 36, or if it has been arranged by arbitration under sections 64 to 70, the fact should in Column 8.

কর্ত্তৃক রদ হয় বা ৬৪ হইতে ৭০ ধারামতে সালিসকর্ত্তৃক মীমাংসা হয় তাহা লিখিতে হইবে।

14	15	16	17	18	19	20
Date of submission of partition papers to Commissioner by Collector, section 86. কালেক্টরকর্ত্তৃক কমিশ্যনরের নিকট বিভাগের কাগজ পাঠাইবার তারিখ, ৮৬ ধারা।	Purport and date of Commissioner's order in appeal, if preferred, section 119. আপীল হইয়া থাকিলে কমিশ্যনরের হুকুমের মর্ম্ম ও তারিখ, ১১৯ ধারা।	Date of confirmation of partition by Commissioner, section 118 or 120. কমিশ্যনরকর্ত্তৃক বিভাগ মঞ্জুরের তারিখ, ১১৮ বা ১২০ ধারা।	Purport and date of the Board's order in appeal, if preferred, section 122. আপীল হইয়া থাকিলে বোর্ডের হুকুমের মর্ম্ম ও তারিখ, ১২২ ধারা।	Date of possession being given to the several proprietors of the separate estates allotted to each, section 123. বিভক্ত মহলের প্রত্যেক অংশে প্রত্যেক শরিককে দখল দেওয়াইবার তারিখ, ১২৩ ধারা।	Numbers of the new estate in Part I of the General Register. সাধারণ রেজিষ্টরির প্রথম খণ্ডে নূতন মহল সকলের নম্বর।	REMARKS. মন্তব্য।

RETURN XXVII.

Partition Fees realized under Section 39, *Act VIII* (*B.C.*) *of* 1876, *in the District of* *during the year ending* 31*st March* 188 .

Total number of estates under partition.	Amount of fees in hand at close of the previous year.	Amount of fees realized during this year.	Total.	Amount disbursed during this year.	Balance (column 4—column 5).	REMARKS.
1	2	3	4	5	6	7

I CERTIFY that the sum of Rupees Annas Pie entered in column 3 has been credited in the accounts rendered to the Accountant-General, Bengal, during the year as "Partition Fees."

The 188 . } *Collector.*

RETURN XXVIIA.

(See Rule 15A.)

Statement showing the expenditure incurred and the average cost per acre of the land partitioned in the district of for the year ending 31*st March* 189 .

1	2	3	4	5	6	7	8	9	10
Number of estates in which partition.	The actual cost in	Number of estates partitioned during year.	The actual cost in	Total (b) of partitions completed during the year.	Average per acre (c)	Longest period of cost taken	Shortest period of cost taken	Average cost of partitions completed during the year.	Remarks.

5 " Total cost (b) of partitions completed during the year."

6 " Of partitions completed during the year." 12-9-91.

91.

(a) This "number" is to show *only* those estates of which the partition is *concluded* during the year under report, whether the partition was commenced in that or any previous

(b) " The total cost will include all expenditure incurred from the beginning to the end of each case." 12-9-91.

artition is
ither from
om Return

(c) This "average" is to be calculated from columns 4 and 5.

Dated
The 189 .

Collector.

2-9-90.

"Pension and leave allowances." 16-10-96.

LEDGER FORM.

[*See Rule* 13.]

1	2	3	4	5							6		7	8			9	10
				DEMAND.							REALIZATIONS.			EXPENDITURE.				
Number of case.	Number on the towji.	Name of mehal and pergunnah.	Name of proprietor.	Remuneration to amins.	Contribution to establishment in Collector's office.	Contribution to establishment in Commissioner's office.	Contingent expenses.	Process fees.	Total.		Date.	Amount.	Balance.	Date.	On what account.	Amount.	Amount of balance remaining to the credit of the estate after meeting all expenses connected therewith.	REMARKS.

PROGRESS FORM D.

[*See Rule* 15.]

STATEMENT showing the progress made in the disposal of Butwarra Cases in the district of during the quarter ending 188 , and two preceding quarters.

	Quarter ending	Quarter ending	Quarter ending
(1) Number of cases at the beginning of the quarter			
(2) Institutions			
(3) Number of cases disposed of by the amin ...			
(4) Number of cases submitted by the Deputy Collector to the Collector for approval of the general arrangements ...			
(5) Number of cases disposed of by the Deputy Collector, *i.e.*, submitted to the Collector for approval of the partition ...			
(6) Number of cases returned by the Collector to the Deputy Collector for any reason whatever ...			
(7) Number of cases disposed of by the Collector, *i.e.*, submitted to the Commissioner for confirmation			
(8) Number of cases confirmed by the Commissioner			
(9) Number of cases finally disposed of by the Commissioner, *i.e.*, struck off the file			
(10) Number of cases pending at the close of the quarter			

FORMS.

[*See Rule* 23.]

No. 1.

Application for partition.

[*See Section* 18.]

To the COLLECTOR of

1. Name and residence of applicant.
2. Name of the estate.
3. Number under which the estate is borne on the revenue-roll, and the revenue demand for which it is liable.
4. Number under which the estate is borne on the Collector's general register of revenue-paying lands.
5. Name and address of every proprietor, whether recorded or unrecorded.
6. Character and extent of the interest of which each proprietor is in possession.
7. Specification of any lands held by all or any of the proprietors of the parent estate in common with all or any of the proprietors of other estates, and of the rights of such proprietors respectively in such lands.
8. Remarks.

I do declare that this application under section 18 of Act VIII (B.C.) of 1876 is correct to the best of my knowledge and belief.

No. 2.

Notice

to produce rent-roll and statement.

[*See Section* 19.]

Collector's Office.

To

of

Whereas has applied for the partition of his share in estate No. named of this district under Act VIII (B.C.) of 1876, and is unable to produce a rent-roll or statement of the rents collected from such estate on behalf of the applicant during each of the three years immediately preceding, as required by section 19 of Act VIII (B.C.) of 1876, and has stated that you have in your possession the information necessary for the preparation of such rent-roll and statement, you are therefore required to produce such rent-roll and statement on—the—day of 18

Herein fail not.

Collector.

No. 3.

Proceeding on receipt of application.

[*See Section* 21.]

IN THE COLLECTORATE

On the 18 corresponding to 12 Fusli

Esq., Collector present.

Partition of land and separation of revenue of mehal pergunnah district under Act VIII (B.C.) of 1876, on the application of applicants for partition of the said mehal Towji No.

Whereas it is necessary that a notification should be published, and that notices should be served under sections 21 and 22 of Act VIII (B.C.) of 1876 before the 18 it is ordered that copies of the notification with copies of this proceeding be sent to the Judge of and Munsif of , with the request that they will be good enough to order their nazirs to have these notices hung up at their Courts, and will intimate to this Court that they have done so, and that three copies of the notification be made over to the nazir of this Court to be affixed, one on the front of this Court, and the second on the mehal to be partitioned, and the third in the zemindari cutcherry of the mehal, and their service reported to this Court and a copy of the notification with a perwana be sent to the police-station where the mehal is situated, that it may be affixed on the police-station, and a report submitted to that effect before the expiry of the date, and that under section 22, Act VIII (B.C.) of 1876, a notice be served by the nazir of this Court on such of the recorded proprietors of the estate as shall not have joined in the application, and on any other proprietor who may have been named in the application, and receipts taken from them and filed in this Court.

No. 4.

Notification of the application.

[*See Section* 21.]

THE COLLECTORATE OF

Be it known that the undermentioned persons have applied for the butwarra of mehal No. pergunnah . Therefore under this day's order this notification under section 21 of Act VIII (B.C.) of 1876 is published and any person claiming any proprietary right in the estate who may object to the partition is invited to state his objection either in person or by duly authorized agent on

Name of applicant.

Name of mouzah and pergunnah.

No. of towji.

Extent of share.

Date

Collector.

N.B.—The Collector is to cause copies of this notification to be published in the manner prescribed in section 134, and copies thereof to be posted up at (1) the Court of the District Judge, (2) the Court of every Munsif and Sub-divisional Officer within whose jurisdiction, and (3) at every Police-station within the jurisdiction of which, any lands appertaining to the estate are known to be situated.

No. 5.

Notice to recorded and other proprietors.

[*See Section* 22.]

The Collectorate of

To

Be it known that the undermentioned persons have applied for the butwarra of mehal No. , pergunnah . Therefore under this day's order you are hereby informed under section 22 of Act VIII (B C.) of 1876 that if you have any objection to the share of the applicant, you should state your objection either in person or by duly authorized agent on

Name of applicant.	No of towji.
Name of mouzah and pergunnah.	Extent of share.

Date

Collector.

N.B.—Copies of this notice are to be served in the manner prescribed by section 135 on such of the recorded proprietors as shall not have joined in the application and on any other proprietor who may have been named in the application.

No. 6.

Proceeding declaring estate to be under partition.

[*See Section* 31.]

IN THE COLLECTORATE.

Whereas
has applied for the partition of his share in estate No. name of of this Collectorate and

and there is no reason to believe that any obstacle exists to making the partition as applied for, it is therefore directed under section 31 of Act VIII (B.C.) of 1876 that the application be admitted and the estate declared to be under partition for the purpose of forming and assigning to the applicant a separate estate. The particulars of the extent of interest in the parent-estate held by the applicant (or joint applicants) are as follows :—

It is ordered that the lands proportionate to the interest declared to be held by each applicant (or body of joint applicants)
shall be formed into a separate estate to be assigned to such applicant (or body of joint applicants) and that lands proportionate to the interest so declared to remain to the recorded proprietor (or the number of recorded proprietors who are not-applicants shall be left forming a separate estate.

Date

Collector.

No. 7.

Notice to persons interested.

[*See Section* 36.]

The office of the Commissioner of

To

Whereas it appears that sufficient reason exists why the partition of estate No. borne on the revenue roll of the Collectorate should not be proceeded with, you are hereby required, under section 36 of Act VIII (B.C.) of 1876, to show cause within from the date of the service of this notice why the partition case should not be struck off the file.

Date

Commissioner.

No. 8.

Notification

of commencement of the Butwarra.

[*See Section* 51.]

The Collectorate.

Whereas the Collector has made an order under section 31 declaring the estate to be under partition, it is now notified under section 51 of Act VIII (B.C.) of 1876 that it is intended to proceed with the partition. All the proprietors of the estate are therefore required to produce before either jointly or separately, copies of their rent-rolls and statements of the rents collected during each of the three years next preceding, and also copies of any measurement-papers of the estate which may be in their possession.

Date

Deputy Collector.

N.B.—The Deputy Collector is to cause copies of this notification under, section 51, to be published the manner prescribed by section 134, and also copies thereof to be posted up at—

(1) the Court of the Judge of the district in which any lands appertaining to the parent estate are known to be situated,

(2) the Court of every Munsif and of every Sub-divisional Officer within the jurisdiction of whom, and

(3) at every Police-station within the jurisdiction of which, any such lands are known to be situated,

and a notice, to the same effect, is to be served as provided in section 135 on each proprietor of the parent estate.

No. 9.

Notice to each proprietor.

[*See Section* 51, *clause* 2.]

The Collectorate.

To

Whereas the Collector has made an order under section 31 declaring the estate to be under partition, you are now informed, under clause 2 of section 51 of Act VIII (B.C.) of 1876, that it is intended to proceed with the partition. You are therefore required to produce before either jointly with other proprietors, or separately, copies of your rent-rolls and statements of the rents collected during each of the three years next preceding, and also copies of any measurement papers of the estates which may be in your possession.

Date

Deputy Collector.

N. B.—A copy of this notice is to be served on each proprietor of the parent estate in the manner provided in section 135.

No. 10.

Requisition for rent-rolls and statement.

[*See Section* 53.]

The Collectorate.

To

Whereas it appears that proprietor of estate No. borne on the towjih of this district, having been required by a notice under section 51 to produce his rent-roll or statement of rents collected, has stated that he is unable to produce such rent-roll or statement, and has stated to the Deputy Collector the cause thereof, and that you are in possession of the information necessary for the preparation of such rent-roll or statement, you are, therefore, requested to produce such rent-roll or statement on or before the 18

Herein fail not.

Date

Deputy Collector.

No. 11.

NOTIFICATION

TO PROPRIETORS, MANAGERS, &C., TO ATTEND.

[*See Section* 55.]

THE COLLECTORATE.

NOTIFICATION to*
proprietors of mehal
pergunnah , zillah

TO-DAY the records connected with the butwarra of this mehal have been submitted for the purpose of appointing an amin for the measurement, and an amin has this day been appointed for that purpose; therefore under section 55 of Act VIII (B.C.) of 1876 you are informed that you are required to attend in person or by an agent upon the undersigned or upon the amin for the purpose of pointing out boundaries, and of affording such assistance and information as may be required for the purposes of the Partition Act. Herein fail not.

Dated

Deputy Collector.

* NOTE.—Here enter the names of the managers and any other persons employed in the management of the land or otherwise interested therein.
N.B.—This notification is to be published in the manner prescribed by section 134.

No. 12.

NOTICE

TO PROPRIETORS AND OTHERS, TO ATTEND.

[*See Section* 56.]

THE COLLECTORATE.

NOTICE to the patwari * of the mehal
, pergunnah , zillah

THE records of the butwarra of mehal , pergunnah
zillah , No.
towji having been submitted, in accordance with to-day's order, you are informed under section 56 of Act VIII (B.C.) of 1876 that you are required to attend the undersigned (or the amin) at the time of making the measurement of the lands of the said mehal. In case of your failure the proper orders will be passed.

Herein fail not.

Dated 18

Deputy Collector (or Amin, &c.)

* Or to any proprietor or other person whose attendance is required.
N.B.—This notice is to be served as provided in section 135.

No. 13.

NOTIFICATION

TO PROPRIETORS, OF DATE FOR DECIDING MODE OF PARTITION.

[*See Section* 63.]

THE COLLECTORATE.

WHEREAS the papers of the measurement, jummabandi and raibundi, for the butwarra of the mehal , pergunnah , zillah , have been completed, and the papers are sufficiently correct to be accepted or adopted for the purposes of the partition, therefore notice is hereby given under section 63 of Act VIII (B.C.) of 1876 that has been fixed for the determination of the general arrangement of the partition, and all proprietors of the mehal are called on to be present in this office on that day for the purpose of takhtabundi. The proprietors are not to fail in this.

Dated 18

Deputy Collector.

N.B.—This notification is to be published in the manner prescribed by section 134.

No. 14.

NOTICE

TO EACH PROPRIETOR (OR HIS AGENT).

[*See Section* 63.]

THE COLLECTORATE.

TO

WHEREAS the papers of the measurement, jummabundi, and raibundi, for the butwarra of the mehal pergunnah zillah have been completed, and the papers are sufficiently correct, to be accepted or adopted for the purposes of the partition: therefore notice is hereby given to you under section 63 of Act VIII (B.C.) of 1876 that has been fixed for the general arrangement of the partition, and you are called on to be present in this office on that day for the purpose of Takhtabundi.

Date

Deputy Collector.

No. 15.

NOTICE POSTPONING PROCEEDINGS.

[*See Section* 71.]

THE COLLECTORATE.

List of Butwarra cases postponed under Section 71 *of Act VIII* (*B.C.*) *of* 1876 *for settling the general arrangement of the partition.*

Number of the estate on the Towjih.	Name of the estate.	Name of the applicant for partition.	Names of non-applicants.	Date originally fixed under section 63.	Date to which postponed under section 71.	REMARKS.

Date

Deputy Collector.

No. 16.

NOTICE TO RECORDED PROPRIETORS.

[*See Section* 72.]

THE COLLECTORATE.

To

WHEREAS objections have been preferred by in the partition case of estate No. before the general arrangement of the partition has been settled under section 71, and whereas it is necessary to make further enquiry, you are hereby informed that the settlement of the general arrangement of the partition has been postponed to

Date

Deputy Collector.

No. 17.

NOTICE

OF DATE FOR CONSIDERATION OF GENERAL ARRANGEMENT.

[*See Section* 75.]

THE COLLECTORATE.

To

Proprietors of mehal , pergunnah , zillah .

THE records of the butwarra of mehal pergunnah , zillah , having been received from for the sanction of the general arrangement of the butwarra, therefore, under section 75, Act VIII (B.C.) of 1876, you are hereby informed that, if you have any objection to the general arrangement made by the Deputy Collector in the butwarra, you will either personally or by an authorized agent file the objection on , and that in default of your doing so no objection will be heard after the expiry of the fixed time, and the arrangement proposed by the Deputy Collector will be sanctioned.

Dated 18

Collector.

No. 18.

NOTICE

TO PROPRIETORS, &c., TO TAKE EXTRACTS.

[*See Section* 79.]

THE COLLECTORATE.

To

Proprietors of mehal , pergunnah , zillah .

AFTER preparing the papers of the butwarra of mehal as directed by this office, the amin has submitted the papers; therefore under section 79 of Act VIII (B.C.) of 1876, you are hereby called upon to take out from my office the extract of the portion of the partition paper relating to your separate estate. Herein fail not.

Dated 18

Deputy Collector.

No. 19.

NOTIFICATION

OF DATE OF TAKING UP THE CASE.

[*See Section* 80.]

THE COLLECTORATE.

THE records of the butwarra of mehal having been completed, have been received in this office for sanction. It is therefore hereby notified under section 80 of Act VIII (B.C.) of 1876 that on the butwarra case abovementioned will be taken up, and any representations and objections which may be preferred in respect of the partition made by the Deputy Collector will be considered, and all parties concerned, who may wish to do so, are called on to inspect the papers of the case at this office before such date, and to take copies of such papers as they may require.

Dated 18

Collector.

N.B.—This notification is to be published in the manner prescribed by section 134.

No. 20.

NOTICE

TO THE RECORDED PROPRIETORS.

[*See Section* 80.]

THE COLLECTORATE.

To

Proprietors of mehal
pergunnah *district* .

THE records of the butwarra of mehal having been received in this office for sanction, you are therefore hereby informed under section 80 of Act VIII (B.C.) of 1876 that you may file any representation or objection you may wish to prefer in respect of the partition made by the Deputy Collector on 18 , and that you may inspect the papers of the case at this office before such date, and may take copy of any such papers as you may require.

Dated 18

Collector.

No. 21.

Notice

TO THE RECORD PROPRIETORS.

[*See Sections* 84 *and* 85.]

To

Proprietor of the mehal
pergunnah , zillah

As the butwarra of mehal pergunnah , zillah , has been approved by the undersigned, you are hereby informed under section 84 (or 85) of Act VIII (B.C.) of 1876, that the papers will be submitted at once for confirmation of the partition by the Commissioner, and that any appeals or objections must be presented to the Commissioner, or to the undersigned for transmission to the Commissioner, within thirty days from the service of this notice.

2. As the partition has been approved by this office with certain amendments, the appeals or objections must be presented within six weeks of the date of the service of notice, and you are hereby required to produce before me within fifteen days of the service of this notice the extract from the paper of partition which has been prepared, and any map relating to your separate estate, in order that the amendments made by this office in the partition may be noted thereon.

3. As a new partition paper and map have been prepared, it is hereby declared that the extracts and maps which were furnished or offered to you under section 79 are cancelled, and you are required to take out of this office extracts of the new partition paper and maps relating to your respective separate estates.

Dated

Collector.

N.B.—Paragraphs 2 and 3 are to be retained or omitted according to the circumstances of each case.

No. 22.

Notice

OF PAYMENT IN REDEMPTION OF RENT.

[*See Section* 95.]

THE COLLECTORATE.

To

Whereas the dwelling-house of with has been included in the separate estate assigned to you from the parent estate , district and the annual rent to be paid in perpetuity in respect of the land occupied thereby has been fixed by the Deputy Collector and stated in the paper of partition, and the proprietor thereof has applied for permission to redeem the annual rent so fixed, and permission has been given him, and the said proprietor has paid Rs. being the certified amount payable by him in redemption of the annual rent, you are hereby informed, under section 95 of Act VIII (B.C.) of 1876, that the sum will be paid to you or to your authorized agent on application, and that from the date on which possession may be given the said proprietor who has redeemed the rent of such land will be entitled to hold such land as a rent-free tenure secured against you and against any auction purchaser at a sale for arrears of revenue including the Government, and that from such date the lands shall be so held as a rent-free tenure.

Deputy Collector.

No. 23.

Notice

TO PROPRIETORS, &c., TO ATTEND.

[*See Section* 99.]

THE COLLECTORATE.

To

Proprietor of

WHEREAS it has been decided to draw lots in respect of your share which is to be separated from the parent-estate , No. , district , you are hereby required, under section 99 of Act VIII (B.C.) of 1876, to attend at the office of Deputy Collector of in person or by authorized agent on 18 for the purpose of drawing lots.

Date

Deputy Collector.

No. 24.

Notice

TO CERTAIN PROPRIETORS TO APPOINT AGENT.

[*See Section* 99, *Clause* 2.]

THE COLLECTORATE.

To

Proprietors of

WHEREAS your shares in estate , No. , district , have been ordered to be formed into an aggregate share for the purpose of drawing lots in respect of the share of

you are hereby required, under section 99 of Act VIII (B.C.) of 1876, jointly to appoint an agent to draw lots on your joint behalf on 18 , and if you fail to agree to any such joint appointment or to cause the attendance of an agent authorized to act jointly for all of you, you will be deemed to have failed to comply with this requisition.

Date

Deputy Collector.

No. 25.

NOTIFICATION

OF DATE FOR HEARING CASE.

[*See Section* 119.]

THE OFFICE OF THE COMMISSIONER OF

WHEREAS the partition proceedings of estate , No. , district , have been submitted to the undersigned for confirmation, and it is necessary to fix a day for hearing and disposing of the case, all parties concerned in the case above mentioned are required, under section 119 of Act VIII (B.C.) of 1876, to appear before the undersigned in person or by authorized agents at of 18 .

Herein fail not.

Commissioner.

N.B.—This notification is to be published in the manner prescribed by section 134.

No. 26.

NOTICE.

[*See Section* 119.]

THE OFFICE OF THE COMMISSIONER OF

List of Butwarra cases pending for the consideration of the Commissioner under section 119 *of Act VIII* (*B.C.*) *of* 1876.

Number of the estate on the Towjih.	Name of the estate.	District.	Name of the applicant for partition.	Names of non-applicants.	Date fixed for hearing and disposing of the case.	REMARKS.

Date

Commissioner.

M

No. 27.

Notice postponing proceedings.

[*See Section* 120.]

The office of the Commissioner of

List of Butwarra cases postponed under section 120 *of Act VIII* (*B.C.*) *of* 1876 *for hearing and disposing of all objections.*

Number of the estate on the Towjih.	Name of the estate.	District.	Name of the applicant for partition.	Names of non-applicants.	Date fixed for hearing and disposing of the case under section 119.	Date to which the hearing is postponed under section 120.	Remarks.

Date

Commissioner.

No. 28.

Notice

of confirmation of partition.

[*See Section* 122.]

THE COLLECTORATE.

Notice is hereby given under section 122 of Act VIII (B.C.) of 1876 that the partition of the mehal has been finally confirmed, as it was sanctioned (or as amended and altered) by the Commissioner.

Dated

Collector.

N.B.—This notice is to be published—

(1) In the Collector's office.
(2) In some conspicuous place in each of the estates separately constituted by the final order.

No. 29.

Notice

WHEN AMENDMENTS INVOLVED, OR FRESH EXTRACTS, &C., REQUIRED.

[*See Section* 122.]

Notice to
proprietor of mouzah ,
pergunnah , zillah .

2. As the partition of mehal as finally sanctioned involves certain amendments which may conveniently be made on the extracts of the partition paper and on the maps which have been prepared and delivered or offered by notice to you, you are hereby required, under section 122 of Act VIII (B.C.) of 1876, to produce such extracts and maps in order that such amendments may be noted on them.

3. As the alterations made in the partition as finally sanctioned are such as make it desirable to prepare fresh extracts and maps, it is hereby declared, under section 122 of Act VIII (B.C.) of 1876, that the extract and map which were furnished or offered to you are cancelled, and you are required to take out of this office the fresh extract and map which have been prepared.

Dated

Collector.

N.B.—Paragraph 2 or 3 is to be retained or omitted according to the circumsntces of each case.

No. 30.

Order to Amin.

[*See Section* 123.]

THE COLLECTORATE.

Parwana to
Amin appointed for the partition of mehal
pergunnah , zillah

Whereas the partition of the mehal has been sanctioned by the Commissioner in his letter No. , dated 18 , therefore under section 123 of Act VIII (B.C.) of 1876 you are to proceed on
18 to the mehal to give possession under the Commissioner's order, and are to submit the papers of giving possession immediately after ,
and in default of carrying out the above order (*i.e.*, of giving possession within the above time) you will be held responsible, and strict orders will be passed on you because from each share is to be considered a separate and independent mehal.

Herein fail not.

Dated 18 .

Collector.

No. 31.

Notice

TO EACH RECORDED PROPRIETOR.

[*See Sections* 123 *and* 124.]

THE COLLECTORATE.

Notice to
, proprietor of estate
You are hereby informed, under section 123 of Act VIII (B.C.) of 1876, that the butwarra of mouzah
has been sanctioned by the Commissioner of , and possession has been accordingly given. This notice is given to you that from the mehal assigned to you is to be deemed an estate separate from the parent estate, and to be separately liable for the Government revenue of that mehal, viz., Rs. a year, and you are hereby called upon to attend the office of the undersigned within 15 days, and enter into a separate engagement for the payment of the Government revenue aforesaid.

Dated 18 .

. *Collector.*

No. 32.

Application for union.

[*See Section* 129.]

To

The Collector of

The humble petition
of *
respectfully sheweth
that
* estates, viz.

have come into your* petitioner's possession, and that your petitioner has been recorded a proprietor.*

That it is necessary for your petitioner to hold the aforesaid estates as a single estate.

It is therefore prayed under section 129 of Act VIII (B.C.) of 1876 that under section 130 of the Act this application may be complied with, and the necessary entries be made in the records of your office, and the case reported to the Commissioner of the Division.

And your petitioner as in duty bound shall ever pray.

Note.—The entries marked* in this form may be altered according to the circumstances of each case.

No. 33.

NOTIFICATION

OF APPLICATION FOR UNION.

[*See Section* 130.]

THE COLLECTORATE.

WHEREAS
have been in possession of estates
Nos.
respectively, and have applied to have such estates united, and to hold them as a single estate, it is hereby notified, under section 130 of Act VIII (B.C.) of 1876, that any one who has an objection to the proposal may prefer his objection on or before the
after which orders will be passed.

Dated 18

Collector.

No. 34.

PERWANA

TO NAZIR TO REALIZE FINE.

[*See Section* 137.]

THE COLLECTORATE.

To
THE NAZIR OF THE COLLECTORATE.
YOU are hereby informed that , proprietor (or other person) of after the issue of notice, has failed to comply with a requisition made upon him under this Act that he should
Therefore, under section 137 of Act VIII (B.C.) of 1876, you will realize the sum of Rs. as daily fine from this day until the requisition aforesaid is complied with
Herein fail not.
Names of the proprietors—
Names of mouzah pergunnah
Residence of proprietors—
Amount—

Dated 18

Collector (or Deputy Collector).

No. 35.

Order to the Nazir.

Collectorate.

To

Nazir.

Whereas it is necessary to serve the accompanying notices under section of Act VIII (B.C.) of 1876 on the persons named in the margin in the butwarra case of mehal you are therefore directed hereby to serve them in the manner prescribed by section 135 of the said Act, and to submit your return as soon as possible before the date fixed.

Collector.

Circular Order No. 6 *of January* 1889.

The Hon'ble F. M. Halliday.

With a view to ensure the personal attention of Revenue Officers to the proper making-up of the record of a Partition case, and to enable them to see at once the progress of every such case from its institution to its close, the Board direct (as the High Court have directed* by their Circular Order No. 13 of 18th July 1877, with regard to regular suits and miscellaneous cases) that there shall be attached to each record an "order sheet" or ruidad. This paper is to contain a note of every hearing, as well as every order made in the case from the commencement to the close.

* Pages 304-5 of the General Rules and Circular Orders, 1881.

2. The practice of writing orders on petitions, perwanas, or amin's reports, and such like papers, is strictly prohibited: orders are to be written on the order sheet only, excepting final decisions. On every petition, return or report requiring an order to be made upon it, there is to be entered at the head thereof a note of the date of the order made and no more; the order and the reasons for making it, when any require to be recorded, are to appear only in the order sheet. Nothing is to be written on any application except the Register Number of the case, the date of filing, and a reference to the order sheet. If any person to be examined is present in office, an order for examination is unnecessary; but the fact of such examination is to be noted in the order sheet.

3. On the case being called on for hearing, if there are any witnesses in attendance, a note of the fact is to be entered in the order sheet, and as the witnesses are called, their names are to be shown there. If evidence taken under a commission is read, this fact with the name of each witness is also to be noted. A similar note is to be made when the return of an amin is read.

4. There is likewise to be a note of all documentary evidence used at the hearing, giving the numbers of the documents used by each party. There is to be one series of numbers for the whole; those of the party who has the right to begin commencing from No. 1, and those of the other parties following in regular order.

5. The final order in the case is not to be written *in extenso* in the order sheet, but the making of it is to be noted. The same course is to be adopted if there is any subsequent application for review.

6. The order sheet may be written by the clerk at the dictation of the presiding officer, and each order when recorded is to be signed by the presiding officer, who is to be responsible for the correctness of the entry signed. It is to be kept in charge of the same officer who has the custody of the record, and at the conclusion of the case is to be permanently attached thereto.

7. Orders of the kind frequently made such as *misl shamil* and the like should never, or very rarely, occur.

8. Appellate Courts are to be guided by the spirit of these rules in making up the appeal record.

9. The order sheet (which is to be in the following form) is to have columns ruled off to the right and left—one for the date and the other for the signature of the presiding officer:—

Order sheet, dated from to

No. of 18

Partition of Mehal Towjih No. District

Applicants for partition.

Non-applicants.

Serial number of order	Date	Order	Signature.

QUESTIONS

for the use of an Officer inspecting the Butwarra Department of the Collector's office.

Partition.

Register No. 2.—1. How many estates have been brought under partition?

(*a*) Is there any specially appointed Deputy Collector for this work?

2. If not, how has the work been distributed?

3. How many cases completed and how many pending?

4. Are there any old cases pending? If so, state the year in which they were commenced?

5. After an application for partition has been received, has the record-keeper's report been taken to see whether the applicant's name has already been registered in Register A?

6. Has the notice under section 21 of Act VIII (B.C) of 1876 been issued?

7. Any objection brought?

8. If so, how disposed of?

9. Has the estate been declared as brought under partition under the provisions of section 31, Act VIII (B.C.) of 1876?

10. Has any subsequent application for separation of another share been made?

11. If so, how dealt with?

12. Any partition stayed at the request of parties?

13. If so, have the expenses incurred been realized?

14. Has the notice under section 51 been issued?

15. Have rent-rolls been filed? If so, are they verified as required by section 52, Act VIII (B.C.), 1876?

16. Is there any proprietor who has not filed his rent-roll?

(*a*). If so, has he stated in writing the cause of his inability?

17. Have the rent-rolls been tested by the Deputy Collector?

18. Have notices under section 55 been issued?

19. Is any check employed to see at what rate the amin does his work?

20. Have amin's papers, if filed, been properly tested by Deputy Collector?

21. Have notices under section 63 been issued?

22. Has any estate been partitioned by amicable arrangement or by arbitration?

23. If so, have the arbitrators delivered the partition papers?

24. How were the arbitrators remunerated? If not paid for, have the papers been recalled by the Collector?

25. If this mode was adopted, has the Collector assessed the land revenue himself?

26. Has procedure under section 71 been adopted?

27. How have any objections filed been disposed of?

28. Has any compensation been allowed under section 73?

29. Have proceedings determining the general arrangement of the partition been recorded?

30. Has this been submitted to the Collector and approved?

31. Have the papers been submitted to the Collector for sanction?

32. Have separate extracts for each share-holders been prepared?

33. Have notices under section 80 been published by the Collector?

34. If any amendment has been made by the Collector, whether the papers and maps have been corrected accordingly?

35. Was any land redeemed under section 92?

36. What was the amount certified by the Deputy Collector?

37. Has the redeemed land been registered?

38. Were lots drawn in any case? if so, in what way?

39. Was any joint petition presented for partition according to private division?

40. If so, was it referred to the Collector?

41. Have the several proprietors been put into possession?

42. Was notice under section 123 issued?

43. Were any boundary marks constructed?

PART II.

THE CERTIFICATE PROCEDURE.

ACT VII (B.C.) OF 1880.

(*Received the assent of the Lieutenant-Governor on the 22nd April* 1880, *and of the Governor-General on the 26th June* 1880.)

An Act to amend the law for the recovery of certain Public Demands.

Preamble.

WHEREAS it is expedient to amend the law for the recovery of certain dues and debts demandable by Public Officers: It is hereby enacted as follows:—

Short Title.

1. This Act may be called "The Public Demands Recovery Act, 1880."

Extent.

Notwithstanding anything contained in section 2, it extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal.

Commencement.

It shall come into operation on and after the date on which it shall be published in the *Calcutta Gazette* with the assent of the Governor-General.

Construction of this Act.

2. This Act, so far as is consistent with the tenor thereof, shall be construed as one with Act XI of 1859, passed by the Governor-General in Council, and Act VII of 1868 passed by the Lieutenant-Governor of Bengal in Council. The powers given by this Act shall be deemed to be in addition to, and not in derogation of, any powers conferred by any Act now being in force for the recovery of any due, debt, or demand to which the provisions of this Act are applicable.

Repeal of Acts in Schedule

3. The Acts specified in the first Schedule annexed to this Act are hereby repealed from and after the commencement of this Act, to the extent specified in the third column of that Schedule: provided that this repeal shall not affect—

(*a*) the past operation of any enactment hereby repealed, nor anything duly done or suffered thereunder:

(*b*) any liability created under any enactment hereby repealed.

Every Certificate made under the provisions hereby repealed of Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council, may be enforced under the provisions of this Act.

Certificate under Bengal Act VII of 1868 to be enforced under this Act.

4 In this Act, unless the context otherwise requires, but not in the other Acts mentioned in section 2—

Definitions.

"Section." "Section" means a section of this Act.

"Collector." "Collector" means (*a*) within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal, the Collector of Calcutta; (*b*) without those limits, the Collector of a district or any officer specially appointed by the Lieutenant-Governor to perform the functions of a Collector under this Act; and (*c*) any officer in charge of a subdivision of a district whom the Collector of such district, with the sanction of the Commissioner, authorizes to perform such functions as aforesaid.

Note 1.—"Under section 7 the 'Collector of the District' is empowered to make a certificate, &c., &c. Collector in the Act means the Collector of the District, or any officer specially appointed by the Lieutenant-Governor to perform the functions of a Collector under this Act [see (*b*) of section 4]. Any officer specially authorized to act as a Collector is therefore a Collector, and as a Collector is a Collector of the District: it follows that an officer specially authorized &c., &c., is a Collector of the District within the meaning of this Act, and can make certificates under section 7." [Opinion of the Hon'ble the Advocate-General, dated 1st March 1882, in which the Legal Remembrancer agreed.]

See also the note to section 19.

Note 2.—"A Collector exercising powers under the Certificate Procedure is not a Judicial authority under clause 3 of section 5 of Act XI of 1859." [Opinion of the Hon'ble the Advocate-General, dated 14th January 1884, in Board's Miscellaneous Proceedings of 16th January 1884, No. 149, Collection 7, File 3010.]

5. In the following cases, that is to say—

When an estate or tenure has been sold for its own arrears, and the sale-proceeds are insufficient to liquidate the same; or

(1) when, under the provisions of Act XI of 1859, passed by the Governor-General in Council, or of Act VII of 1868, passed by the Lieutenant Governor of Bengal in Council, an estate or tenure has been sold for the recovery of arrears of revenue due thereupon, and, after deducting the expenses of such sale, the balance of the sale-proceeds remaining is insufficient to liquidate the arrears of revenue in discharge of which such sale-proceeds may under the aforesaid provisions be applied;

when arrears of revenue due from a farmer are not paid on latest date of payment,

(2) when arrears of revenue due from a farmer on account of an estate held by him in farm are not paid on the latest day of payment fixed under the provisions of section 3 of Act XI of 1859, passed by the Governor-General in Council;

the Collector of the district may make a certificate of the unpaid arrears.

the Collector may make under his hand, and in form No. 1 in the second Schedule annexed to this Act, a certificate of the amount of arrears so remaining unpaid, and may cause the same to be filed in his office.

6. (*a*) Subject to the provisions of this Act, every certificate made under the provisions of section 5 shall, as regards the remedies for enforcing the same and so far only, have the force and effect of a decree of a Civil Court, and the Secretary of State for India in Council shall be deemed to be the decree-holder, and the person therein named as debtor shall be deemed to be the judgment-debtor.

Such certificate shall have the force and effect of a decree of a Civil Court as regards the remedies for enforcing it.

(*b*) Such judgment-debtor may, at any time within one year after the service upon him of such notice as is mentioned in section 10, bring a suit in the Civil Court to have the said Certificate cancelled on the ground that the arrears stated therein were not due by him; but no such suit shall be entertained unless such judgment-debtor has paid such arrears to the Collector within one month after being served with the said notice, or, in any case in which he has filed a petition of objection under section 12, then within fifteen days after such petition has been heard and determined.

Judgment-debtor may bring a suit in the Civil Court to contest his liability, if he has deposited the amount of the Certificate.

(*c*) If no such suit is instituted within the said period of one year, or if any such suit, having been so instituted, is decided against such judgment-debtor, such Certificate shall become absolute, and shall have to all intents and purposes the effect of a final decree of a Civil Court.

If no such suit brought within one year, or if brought and decided against judgment-debtor, the Certificate to become absolute, and have effect of a decree of the Civil Court to all intents and purposes.

7. When any arrears of the following Public Demands are unpaid by the person liable to pay the same, that is to say—

When any arrear of a Public Demand is unpaid by the person liable to pay the same,

(1) any sum of money which by any law for the time being in force is declared to be recoverable or realizable as an arrear of revenue or land revenue, or by the process prescribed for the recovery of arrears of revenue or of the public or Government revenue:

(2) any sum of money due from the sureties of a farmer in respect of the revenue of the estate farmed by him:

(3) any such demand, money, fee, duty, arrear, fine, or costs as is mentioned in the following sections of the following Acts passed by the Lieutenant-Governor of Bengal in Council, that is to say—in Act VIII of 1862, section 9; in* Act VI of 1873, section 50; in Act IV of 1875, section 1; in Act V of 1875, section 57; in Act III of 1876, section 42, section 73, and section 85; in Act VII of 1876, section 82; in Act VIII of 1876, section 138; in Act VII of 1878, section 36; or in the following sections and portions of the following Act passed by the Governor-General in Council, that is to say—in Act VII of 1870, "The Court Fees Act," sections 19G, 19H, and the note to paragraph 12 of Schedule I:

* Repealed by Act II (B.C.) of 1882: see section 70 of that Act.

(4) in the case of a person to whom the collection of tolls has been farmed under the provisions of section 8 of "The

Canals Act, 1864," or of the sureties of such person—any sum of money due in respect of such farm:

(5) in the case of a person having charge of a ferry subjected to the payment of a yearly rent—any arrear of such rent ascertained and certified as provided in Regulation VI of 1819, section 10:

(6) any arrears of revenue or rent payable to the Secretary of State for India in Council from any ryot, or from any person holding any interest in land pasturage, forest rights, fisheries, and the like, whether such interest is or is not transferable:

(7) in the case of property which, under the provisions of any law for the time being in force, has been taken under the charge of, or is managed by, the Court of Wards or the Revenue authorities on behalf of a private individual—any arrears of rent or of other demands recoverable as rent, whether such arrears became due before or after the management devolved upon such Court or such authorities; provided that this clause shall not apply to any arrears of rent at an enhanced rate, unless such enhanced rate has been agreed to by the person liable to pay the same, or has been confirmed by a competent Court:

(8) any sum payable to a Public officer of Government in respect of which the person liable to pay the same has agreed by a written instrument duly registered that it shall be recoverable under the provisions of this Act:

(9) any fee, duty, tax, or other demand, which by any Act passed hereafter shall be declared to be recoverable under the provisions of this Act;

the Collector of the district may make under his hand, and in form No. 2 in the second Schedule annexed to this Act, a Certificate of the amount of such arrears so remaining unpaid, and may cause the same to be filed in his office: provided that no such Certificate shall be made in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force.

the Collector of the district may make a Certificate of the unpaid demand.

Note to Clauses (6) *and* (7).—In (*a*) trust estates managed by Government as express trustee, arrears of rent are recoverable under clause (6) of section 7. In (*b*) attached estates managed by the Revenue authorities on behalf of private individuals, arrears of rent are recoverable under clause (7) of section 7. The Act does not apply to rents of houses and shops, and the Certificate Procedure cannot be applied to the recovery of such rents. (Board's Wards' Proceedings of 16th February 1884, No. 34, Collection 10, File 672.)

Note 1 *to Clause* (7).—With reference to the wording of this clause, there is no necessity for the Board to notify the latest days of payment of rent due to wards' estates. (Board's Wards' Proceedings of 7th August 1880, No. 245, Collection 9, File 2113.)

Note 2 *to Clause* (7).—The Legal Remembrancer has given an opinion that a fine imposed under section 58A of Act IX (B.C.) of 1879 cannot be properly levied by the Certificate Procedure. (Board's Miscellaneous Proceedings of 19th November 1887, No. 151, Collection 7, File 447.)

Such Certificate shall have the same effect as a decree of a Civil Court, as regards the remedies for enforcing the same.

8. (*a*) Subject to the provisions of this Act, every Certificate made under the provisions of section 7 shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a Civil Court. In the cases other than case (7) mentioned in the said section 7, the Secretary of State for India in Council and in the said case (7) the private individual therein mentioned, or, if such private individual be a Minor, Lunatic or Ward of Court, then such Minor, Lunatic, or Ward of Court by his next friend shall be deemed to be the decree-holder, and in all the cases mentioned the person therein named as debtor shall be deemed to be the judgment-debtor.

Judgment-debtor may bring a suit in the Civil Court to contest the Certificate. If no such suit within one year, or if brought and decided against the judgment-debtor, Certificate to become absolute.

(*b*) Such judgment-debtor may at any time within one year after the service upon him of such notice as is mentioned in section 10 bring a suit in the Civil Court to contest his liability to pay the amount stated in the said Certificate, and to have such Certificate cancelled: but no such suit shall be entertained unless such judgment-debtor has stated in a petition presented to the Collector under section 12 the ground upon which he claims to have such Certificate cancelled, or unless, having omitted to state such ground in such petition as aforesaid, he can satisfy the Civil Court that there was good reason for such omission. If no such suit is instituted within the said period of one year, or if any such suit having been instituted is decided against such judgment-debtor, such Certificate shall become absolute, and shall have to all intents and purposes the same force and effect as a final decree of a Civil Court:

Provided that no Certificate duly made under the provisions of this Act shall be cancelled by a Civil Court otherwise than on one or more of the following grounds, that is to say—

(1) that the amount stated in the Certificate was actually paid or discharged before the making of such Certificate;

(2) in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged, by a Collector or a Public officer under the provisions of any Regulation or Act for the time being in force—that the proceedings of such Collector or Public officer were not in substantial conformity with the provisions of such Regulation or Act, and that in consequence the judgment-debtor under the Certificate suffered substantial injury from some error, defect or irregularity in such proceedings:

(3) in cases other than those mentioned in clause (2)—that the amount stated in the Certificate was not due by the judgment-debtor under the Certificate:

(4) want of jurisdiction.

Nothing in this proviso shall be construed to interfere with the ordinary original jurisdiction of the High Court at Fort William in Bengal, or with the jurisdiction of the Calcutta Court of Small Causes.

9. (*a*) When any arrear of any of the public demands specified in section 7 is unpaid by any person liable to pay such public demands to a Public officer other than a Collector, or when any such demand as is specified in clause (7) of the said section is unpaid by any person liable to pay the same to a Manager appointed by the Court of Wards, such officer or such Manager may give to the Collector of the district in which such person resides, or in which such demand is payable, a notice in writing in form No. 3 in the second Schedule annexed to this Act: provided that no such notice may be given in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force.

In case of arrears of public demand payable to officer other than Collector, such officer may give notice to Collector.

Note.—The Board have declined to make a rule that, when the Manager of a ward's estate is subordinate to one Collector only, that Collector should countersign the Manager's notices of demand addressed under this Act to another Collector. Such countersignature, it was said, would be apt to degenerate into a mere act of routine. (Board's Wards' Proceedings of 23rd July 1881, No. 144, Collection 9, File 2734.)

(*b*) Every such notice given by a Manager shall be verified by such Manager in accordance with the provisions of the Code of Civil Procedure as to the verification of plaints, and there shall be payable in respect thereof a Court-fee of the same amount as is payable under the Court-Fees' Act for the time being in force in respect of a plaint for the recovery of a sum of money equal to that stated in such notice.

Such notice given by a Manager to be verified and stamped as a plaint.

(*c*) On receipt of such notice, such Collector, if satisfied that such demand is justly recoverable, may make under his hand, and in the form No. 2 in the second Schedule annexed to this Act, a Certificate of the amount of such arrears so remaining unpaid, and shall cause the same to be filed in his office.

Collector may on receipt of such notice make a Certificate.

(*d*) The provisions of section 8 shall apply to every such Certificate.

10. When a Certificate has been filed in the office of a Collector under the provisions of section 5, or section 7, or section 9, such Collector shall issue to the judgment-debtor a copy of such Certificate and a notice in form No. 4 in the second Schedule annexed to this Act. From and after the service of such notice, such Certificate shall bind all immoveable property of such judgment-debtor situate within the jurisdiction of such Collector in the same manner and with like effect as if such immoveable property had been attached under the provisions of section 274 of the Code of Civil Procedure. A copy of such Certificate may be transmitted by post to any other Collector for the purpose of being filed in his office, and as soon as it is so filed such Certificate shall, if the aforesaid notice has been served, bind in like manner all immoveable property of such judgment-debtor situate within the jurisdiction of such last-mentioned Collector.

When Certificate filed, notice to be given to judgment-debtor. Upon service of notice, Certificate to bind immoveable property of judgment-debtor.

Copy of Certificate may be sent to Collector of another district to be filed in his office; and upon its being filed, Certificate shall bind immoveable property situate in such district.

Note.—The issue of a certificate against the proprietor of an estate does not operate to exempt the estate from sale under clause 2 of section 17, Act XI of

1859. (Board's Miscellaneous Proceedings of 19th December 1885, No. 27, Collection 7, File 388.)

Moveable property of person against whom Certificate has been made may be attached at any time, if Collector satisfied that such person is likely to conceal, remove, or dispose of such property.

11. If in any case other than the case mentioned in clause (7) of section 7, the Collector is satisfied that any person against whom a Certificate has been filed under the provisions of section 5, or section 7, or section 9, is likely to conceal, or remove, or dispose of the whole or any part of his moveable property, and that the realization of the amount of such Certificate will in consequence be delayed or obstructed, he may at any time after making such Certificate direct an attachment of the whole or any part of the moveable property of such person. Such attachment shall be made in the manner provided in the Code of Civil Procedure for attaching moveable property, and subject to the provisions of section 266 of the same Code. Such property may be sold for the purpose of satisfying such Certificate, if no petition of objection is filed under section 12, or if any such petition is filed, then as soon as it has been heard and determined.

Any person served with notice under section 10 may file a petition of objection.

12. If any person, who has been served with a notice under section 10, denies his liability to pay the whole or any part of the amount for which such Certificate has been made and filed against him, he may at any time within thirty days after service of such notice, or, where no such notice has been duly served, within thirty days after the execution of any process for enforcing such Certificate, file a petition denying his liability as aforesaid, before the Collector by whom such Certificate has been made. Such petition shall be in, or as nearly as possible in, the form No. 5 in the second Schedule annexed to this Act.

Note.—A reference being made to the Board whether a petition under this section or any other petitions presented in course of the trial of a case should bear court-fee stamps as provided in No. 1 (*a*) and (*b*) of Schedule II of the Court-Fees' Act, 1870, or should bear a stamp of 8 annas as laid down in 1 (*b*) of that schedule, the Board ruled that the stamping of petitions under this Act should be regulated according to No. 1 (*a*) and (*b*) of Schedule II of the Court-Fees' Act, 1870. (Board's Miscellaneous Proceedings of 4th September 1880, No. 29, Collection 7, File 2471.)

Day to be fixed for hearing such petition. Collector to determine the liability of the petitioner. Certain provisions of the Code of Civil Procedure to apply to the inquiry.

13. Such Collector shall fix a day for hearing any such petition so filed, and upon such day, or any subsequent day to which such hearing may be adjourned, shall determine whether such petitioner is liable for the whole or any part of the amount for which such Certificate was made, and may set aside or modify or vary the Certificate accordingly. Every such Collector shall, for the purpose of hearing any such petition and determining as aforesaid, exercise all or any of the powers of a Civil Court in respect of summoning, causing the attendance of, and examining witnesses, and in respect of causing the production of documents; and the provisions of the Code of Civil Procedure applicable to these matters shall apply to a Collector exercising these powers.

Collector may direct costs of such petition to be paid by the petitioner. Such costs how realized.

14. The Collector shall have full power to direct that the costs of such petition and of the hearing thereof shall be paid by the petitioner, and in any case in which a Collector directs the payment of such costs by any such petitioner, the amount thereof shall

Note 2. v "be stamped with a court-fee of eight annas under article 11 (*a*), Schedule II," 8-6-92.

if such petitioner be the judgment-debtor, be added to the amount entered in the Certificate, and shall be recoverable as if the same had been originally entered therein.

Note.—The Collector has full power to deal with the question whether the costs of authenticated copies of documents filed in cases and travelling allowances of witnesses produced by parties should be allowed and treated as costs of the case. (Board's Miscellaneous Proceedings of 4th September 1880, No. 29, Collection 7, File 2471.)

Collector may refer petition for hearing to Deputy Collector, Assistant Commissioner, &c., who shall have the same powers to hear it as the Collector.

15. The Collector of a district may refer to any Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner subordinate to him, any such petition as is mentioned in section 12, and such Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner shall hear and determine such petition accordingly. The provisions of sections 13 and 14 shall be applicable to any such Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner to whom any such petition has been so referred.

Appeal from Deputy Collector, Assistant Commissioner, &c., to Collector, and from Collector to Commissioner. Stay of execution.

16. An appeal from any order of a Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner may be preferred to the Collector within fifteen days, and an appeal from any original order of a Collector may be preferred to the Commissioner within thirty days after the making of such order respectively. Pending the decision of such appeal, execution may be stayed, if the Appellate authority so direct, but not otherwise.

Note 1.—Parties preferring appeals under this section are required to file with their memorandum of appeal a copy of the decision appealed against, authenticated in the manner laid down in the Board's Rules. (Board's Miscellaneous Proceedings of 4th September 1880, No. 29, Collection 7, File 2471.)

Note 2.—A memorandum of appeal from the orders passed by a Certificate Deputy Collector in regard to certificates filed for arrears of rent should bear an *ad valorem* stamp under article I, Schedule I of the Court-Fees' Act VII of 1870. (Board's Miscellaneous Proceedings of 10th March 1888, No. 256, Collection 7, File 100.)

Power of revision.

17. There shall no appeal, as of right, lie from any order of a Collector passed on appeal from an order of a Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner; but the Commissioner may, in any case in which he thinks fit, revise any order passed by a Collector or Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner.

Certificate may be enforced after one month from notice, or when petition of objection disposed of.

18. Every Certificate made under the provisions of section 5, or section 7, or section 9, may be enforced and executed, upon the expiry of one month after service of the notice mentioned in section 10, or when any such petition as is mentioned in section 12 has been filed, then as soon as such petition has been heard and determined.

Certificate may be enforced under the provisions of the Code of Civil Procedure as a decree for money.

19. Such Certificate may be so enforced and executed by all or any of the ways and means mentioned and provided in and by the Code of Civil Procedure for the enforcement and execution of decrees for money, and all the practice and procedure provided by the said Court of Civil Procedure

in respect of sales in execution of decrees; in respect of raising the amount of a decree otherwise than by sale of immoveable property under the provisions of sections 305, 320, 322, 323, and 324 of the said Code; in respect of arrests in execution of decrees for money; in respect of the execution of decrees by imprisonment; in respect of insolvent judgment-debtors; in respect of claims to attached property; in respect of resistance to execution; and in respect of the execution of decrees out of the jurisdiction of the Courts by which they were passed,

shall apply to every execution issued to enforce such Certificate and realize the amount recoverable thereunder, save that all the duties, powers, and authorities by the said Code imposed or conferred on the Court shall be exercised by the Collector in whose office any such Certificate, or any copy thereof transmitted for execution under the provisions of section 223 of the said Code, has been filed. Subject to the control of the Collector, and save and except in respect of the provisions relating to insolvent judgment-debtors, any of the said duties, powers, and authorities may be exercised by any Deputy Collector, Assistant Commissioner, or Extra Assistant Commissioner subordinate to such Collector.

Note 1.—The Board were asked (1) whether officers are justified in arresting a debtor in a certificate case without warrant on non-satisfaction of the amount of the certificate from the property attached, and (2) whether a Certificate Deputy Collector is competent to refer certificates to Subdivisional officers or other Deputy Collectors for execution under section 19 of this Act, or whether the Collector's own orders are required in such cases. They reply to (1) that "no arrest without warrant is allowed by the Civil Procedure Code, which governs the execution of a certificate," and to (2)—"When a Deputy Collector has been specially appointed by the Lieutenant-Governor under section 4 (*b*) of Act VII (B.C.) of 1880, he has the powers of the Collector of the District throughout the Act, inclusive of the last clause of section 19 and of section 15, *i.e.*, a Certificate Deputy Collector is competent to refer certificates to Subdivisional officers or other Deputy Collectors for execution, and the Collector's own orders are not required in such cases. The word "Collector," as defined in section 4 of Act VII (B.C.) of 1880, means the Collector of the District or any officer specially appointed by the Lieutenant-Governor to perform the functions of a Collector under the Act. There is not in this Act a special definition for 'Collector of District,' as there is in the Cess Act IX (B.C.) of 1880, and it may be inferred that when an officer is vested with the powers of a Collector under Act VII (B.C.) of 1880, Collector means the Collector of the District as under the definition." (Board's Miscellaneous Proceedings of 30th July 1887, No. 281, Collection 7, File 236.)

See also the note to section 4.

Note 2.—A question having arisen whether a Sub-Deputy Collector or other subordinate at a subdivision could be empowered to conduct sales for enforcing certificates under this Act during the absence of the Subdivisional Officer from head-quarters the Board replied that this section of the Act provides that the Collector of a District shall exercise (in respect to the execution of certificates) all the duties, powers and authorities which the Code of Civil Procedure

21. *Note.*—A Manager under the Court of Wards having occasion to inspect a Certificate Register is to be required to pay the fee under this section (Board's Miscellaneous proceedings of 20th September 1890, No. 265, Collection 7, File 332). 1-2-91.

imposes or confers on the Court in respect of the execution of decrees. The Board added—"One of the powers of the Court under section 286 of the Civil Procedure Code is that of appointing any person whom it may think proper to conduct a sale. The power of appointing a person to conduct sales in execution of certificates is therefore conferred on the Collector by section 19 of the Public Demands Recovery Act, and, by the last clause of the section, this power may be exercised, subject to the control of the Collector, by any Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner subordinate to him. The 'power' in question, of which the exercise is restricted to the officers here specified, is not that of actually conducting the sale, but of appointing a person to conduct the sale. And in the exercise of this power the Subdivisional officer is competent to appoint the Sub-Deputy or any other person he may think fit to conduct such sales." (Board's Miscellaneous Proceedings of 15th January 1881, No. 281, Collection 7, File 2624.)

Sale of immoveable property may be set aside, if Certificate is set aside by a competent Court. Proviso.

20. If any immoveable property is sold in execution of a Certificate under the provisions of section 18, and if such Certificate is subsequently set aside by a competent Court, such Court may set aside such sale of such immoveable property, and in any case in which such sale is so set aside, such Court shall direct that the amount of the purchase-money be refunded to the purchaser with or without interest, as such Court thinks fit: provided that no such sale shall be so set aside unless such purchaser has been made or added as a party to the suit brought to set aside such Certificate.

Register of Certificates to be kept in Collector's office and to be open to inspection on payment of fee of eight annas.

21. Every Collector shall cause to be kept in his office a Register in such form as may from time to time be prescribed by the Board of Revenue, and shall cause to be entered in such Register the particulars of every Certificate made under this Act, which, or a copy of which, has been filed in his office. Such Register shall be open during office hours to the inspection of any one desiring to inspect the same, and a fee of eight annas, or such fee not exceeding eight annas as the Board of Revenue may prescribe, shall be chargeable for such inspection.

Payment of sum due under a Certificate may be made by instalments. Payment of instalments to be entered in Register.

22. (*a*) Payment of the amount due under a Certificate may be made by instalments, if the Collector who made such Certificate so direct. The payment of any instalment shall be entered in the Register mentioned in section 21.

When total amount satisfied, Collector to enter satisfaction on Certificate and in Register,

(*b*) When the total amount due under a Certificate has been paid and satisfied, the Collector in whose office such Certificate was originally filed shall enter satisfaction upon such Certificate under his hand and signature, and shall cause the same to be entered in the Register mentioned in section 21.

and to communicate it to other Collector in whose office a copy of such Certificate has been filed.

(*c*) When a copy of such Certificate has been transmitted to another Collector, or when such Certificate has been made under the provisions of section 9 upon notice from a Public officer other than a Collector, or from a Manager appointed by the Court of Wards, such satisfaction shall be communicated to such other Collector or to such officer, or to such Manager.

(*d*) When a sum has been levied or received by a Collector in respect of a Certificate, a copy of which has been transmitted to him and filed in his office, such Collector shall send such sum to the office in which such Certificate was originally made

Sum levied by Collector to whom copy of Certificate sent to be transmitted to Collector who made Certificate.

23. Every Collector, Deputy Collector, Assistant Commissioner, and Extra Assistant Commissioner, and every such Public Officer as is mentioned in section 9 shall, in the discharge of his functions under this Act, be deemed to be a person acting judicially within the meaning of Act XVIII of 1850, passed by the Governor-General in Council.

Collector, Deputy Collector, Assistant Commissioner, Extra Assistant Commissioner and Public officer to be deemed to be acting judicially in the discharge of his duties under this Act.

24. All Collectors, Deputy Collectors, Assistant Commissioners, and Extra Assistant Commissioners shall, in the performance of their duties under this Act, be subject to the general supervision and control of the Commissioners of Divisions and the Board of Revenue.

Collectors, &c., to be subject to the supervision and control of Commissioners and Board in discharge of their duties under this Act.

Note.—The Board have ruled that the fees chargeable for serving and executing processes issued under this Act should be levied according to the rules and scale laid down in the Board's Rules in respect of the levy of fees in Executive revenue processes. (Board's Miscellaneous Proceedings of 4th September 1880 No. 29, Collection 7, File No. 2471, and of 11th October 1884, No. 171, Collection 10, File 6.)

FIRST SCHEDULE—*See* section 3.

Number and year.	Subject of Act.	Extent of repeal.
	Acts passed by the Lieutenant-Governor of Bengal in Council.	
VIII of 1862...	An Act to improve the system of Zemindari Dâks in the Provinces subject to the Government of Bengal.	In section 9, the words from and including "which said double amount" to and including "making default."
VII of 1868 ...	An Act to make further provision for the Recovery of Arrears of Land Revenue and Public Demands recoverable as Arrears of Land Revenue	In section 1, from and including the words "The word 'demand' means" to the end of the section. In section 2, the words "not being a sale made under, and by virtue of, any execution issued upon a certificate made as hereinafter is provided." In section 6 the words "or persons liable to any demands," "or persons," "or any demands," "or persons," "or to any demands," "or persons," and "or of such demands." Sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.
VI of 1873 ...	An Act to amend the law relating to Embankments and Watercourses.	Section 50, from and including the words "under the provisions" to the end of the section.
I of 1875 ...	An Act for the Realization of Arrears in Government Estates.	The whole Act.
V of 1875 ...	An Act to provide for the summary realization of sums due on account of loans made by the Government during the late famine operations.	Section 1, from and including the words "within the meaning" to the end of the section.

Number and year.	Subject of Act.	Extent of repeal.
	Act passed by the Lieutenant-Governor of Bengal in Council—contd.	
V of 1875 ...	An Act to provide for the Survey and Demarcation of Land.	In section 57, from and including the words "under section 2" to the end of the section.
III of 1876 ...	An Act to provide for Irrigation in the Provinces subject to the Lieutenant-Governor of Bengal.	In section 42, from and including the words "under the provisions" to the end of the section. In section 73, from and including the words "under the provisions" to the end of the section. In section 85, from and including the words "under the provisions" to the end of the section.
VII of 1876 ...	An Act to provide for the Registration of Revenue-paying and Revenue-free Lands, and of the proprietors and managers thereof.	In section 82, from and including the word "under section" to the end of the section.
VIII of 1876 ...	An Act to make better provision for the Partition of Estates.	In section 138, from and including the words "under section" to the end of the section.
VII of 1878 ...	An Act to consolidate and amend the law relating to the Excise Revenue in the Presidency of Fort William in Bengal.	In section 36, from and including the words "or by the process" to the end of the section.
IX of 1879 ...	An Act to amend the law relating to the Court of Wards.	Section 63.
	Regulations of the Bengal Code.	
III of 1794 ...	A Regulation for exempting proprietors of land (with certain exceptions) from being confined for arrears of revenue; and for prescribing the process by which tehsildars are to demand payment of arrears; and for enabling the Collectors to recover from Native officers employed under them public money or papers which they may embezzle or retain, &c.	Section 12. Sections 16, 17, 18, 19, and 20, so far as they relate to the recovery of money belonging to Government.

SECOND SCHEDULE.

FORM No. 1.

(*See* section 5).

Certificate of Arrears of Revenue filed in the Office of the Collector of the District of (*name of District*).

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of Arrears of Revenue for which this Certificate is made, and period for which such arrears are due.	Estate or tenure for which Arrears of Revenue due.

I hereby certify that the above-mentioned sum of Rs. is due to the Secretary of State for India in Council from the above named.

Dated this day of 18 . A. B.

Collector of

FORM No. 2.

(*See* sections 7 and 9).

Certificate of Arrears of Public Demands filed in the Office of the Collector of the District of (name of District.)

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of the Public Demand for which this Certificate is made,	Particulars of Public Demand for which this Certificate is made; and Public officer [*or* Manager, *and* of what estate] to whom due.

I hereby certify that the above-mentioned sum of Rs. is due to the Secretary of State for India in Council [*or* to A. B., a Ward of Court, *or* a Minor, *or* a Lunatic, by his next friend B. D.] from the above named.

Dated this day of 18 . A. B.

Collector of

FORM No. 3.

(*See* section 9).

NOTICE OF DEMAND.

To the Collector of the District of

Name of Debtor.	Address of Debtor.	Amount of Public Demand for which this Notice is given.	Nature of the Public Demand for which this Notice is given.

The above sum of Rs. is due from the said in respect of

Certified this day of A. B.

FORM No. 4.

(*See* section 10).

NOTICE.

To (*Insert name of judgment-debtor*).

You are hereby informed that a Certificate for Rs. , due from you on account of , has been this day made by me against you under the provisions of Section of Act of 1880 passed by the Lieutenant-Governor of Bengal in Council, and that such Certificate has been filed in this office. If you deny your liability to pay the said sum of Rs. , you may within thirty days show cause why such Certificate should not be executed. If you fail to show cause within thirty days, or do not show sufficient cause, such Certificate will be executed in the same manner as if it were a decree of a Civil Court for the said sum of Rs. , unless you pay the amount into this office. Until such amount is paid, you are hereby prohibited from alienating your immoveable property or any part of it by sale, gift, mortgage, or otherwise.

A copy of the Certificate above mentioned is hereto annexed.

Dated this day of 18 . A. B.

Collector of

FORM No. 5.

(*See* section 12).

To

THE COLLECTOR OF THE DISTRICT OF

The humble petition of (*name of petitioner*) of (*address*).

SHEWETH—

That a Certificate No. for the sum of Rs. has been filed against your petitioner in your office under the provisions of section of Act of 1880 passed by the Lieutenant-Governor of Bengal in Council.

That your petitioner respectfully denies his liability to pay the said sum of Rs. (or, where the liability to pay part is admitted, denies his liability to pay more than Rs.), and this for the following reasons :—

That the facts above stated are true to the best of your petitioner's knowledge and belief.

Your petitioner therefore respectfully prays that the said Certificate may be set aside *or* modified *or* varied).

RULES UNDER THE PUBLIC DEMANDS RECOVERY ACT.

N.B.—Throughout these rules, unless it appears otherwise from the context, the words "the Act" mean the Public Demands Recovery Act, VII (B.C.) of 1880.

Section I.—Delegation of Powers to Deputy Collectors.

Appointment of special officers as Collectors.

1. The Lieutenant-Governor having approved of a proposal made by the Board to relieve District officers of the burden which has hitherto been imposed on them of making under their own hands certificates of arrears under the Act, by specially appointing an officer in each district to perform the functions of a Collector under the Act as contemplated by clause (*b*), section 4, the annexed instructions are issued for the guidance of Collectors, of officers so specially appointed, and of others concerned in working the Act. A list of the demands falling under sections 5 and 7 of the Act is given in Appendix A. An explanatory extract from the communication* which the Board addressed to Government on the subject is annexed in Appendix B.

* No. 267A, dated 29th April 1882, paragraphs 3 to 12 inclusive.

Nomination of Deputy Collectors.

2. District Officers should submit the names of the Deputy Collectors whom they would propose to be specially empowered, and in doing so the grounds of selection should be stated. The officer nominated should ordinarily be an experienced Deputy Collector, on whose judgment reliance can be placed.

Effect of specially appointing officers as Collectors.

3. The effect of an officer being specially appointed by the Lieutenant-Governor to perform the functions of a Collector under the Act, as mentioned in section 4, is† to vest him with the following powers, which the Collector could not have authorized him to exercise without such special appointment:—

† This is also applicable to the authorization of a Subdivisional officer by the Collector of the District, with the sanction of the Commissioner, to perform the functions of a Collector.

(1) To make certificates under his hand in accordance with sections 5, 7 and 9 of the Act, and to issue copies thereof with notices under section 10.

(2) To direct attachment of moveable property under section 11 immediately after a certificate is made.

(3) To receive petitions of objections under section 12 denying liability to pay the whole or any part of the amount for which a certificate has been made and filed, and to hear, determine, and deal with such petitions under sections 13 and 14, or to refer them under section 15 to any other Deputy Collector for hearing and determination.

(4) To exercise the powers referred to in section 19 in execution of certificates in respect of insolvent debtors.

(5) To hear appeals from any orders of Deputy Collectors.

These appear to be the only powers which a Deputy Collector, who has been duly authorized in that behalf by the Collector, either by a special order (section 15), or in the general distribution of work (section 19), may not exercise.

Powers conferred how to be exercised.

4. The Collector of a district may in any case which comes to his notice (either on reference from the Certificate Officer or in any other way) direct that the certificate be not issued, or that its issue be postponed until he has arrived at a determination about it.

Section II.—The functions of the Requiring Deputy Collector and Certificate Officer.

Requisition from Requiring Officer on the Certificate Officer.

1. Whenever any Deputy Collector or other public officer authorized to issue the notice under section 9 of the Act (to be hereafter designated the Requiring Deputy Collector or Officer) considers that any demand, which it is the business of such officer to realize, should be recovered under the provisions of the Act, he shall make a requisition on the Collector or Deputy Collecter (to be hereafter designated the Certificate Officer) who is authorized to make a certificate under his hand.

Accompaniments of requisition.

2. The requisition shall be accompanied by a statement in form No. 2 of the second Schedule annexed to the Act, which, when signed by the Certificate Officer, may become the original certificate made under his hand and be filed in the Collector's office.

Form of requisition in certain cases.

3. If the requisition be for a certificate for the recovery of any arrear of the classes specified in article 2, clause (*b*), section 8 of the Act, it shall be in the briefest form; but in addition to the above statement a copy of the order of the competent authority by whom the realization of the arrear was ordered shall be annexed.

Certificate how to be made.

4. On receipt of such requisition the Certificate officer shall (in the absence of any obvious reason to the contrary) make the certificate under his hand by formally signing the draft form sent to him by the Requiring Deputy Collector.

Responsibility of Requiring Deputy Collector.

5. If the arrear be of any other class of demand than those specified in the said article 2, clause (*b*) of section 8, the Requiring Deputy Collector shall, in his requisition, state whether there is any reason to doubt that the person against whom it is sought to take out the certificate will admit his liability to pay the amount specified, or any part of it, with a brief explanation of the circumstances of the case. The Requiring Deputy Collector will be held responsible that this duty is performed carefully and intelligently, and not as a matter of routine.

Duty of Certificate Officer.

6. On receipt of such application the Certificate Officer before making the certificate shall—(1) satisfy himself in a general way that the demand is justly recoverable; (2) consider whether the arrear is one

which, under all the circumstances of the case, should be recovered by the summary procedure of the Act.

7. If the Certificate Officer is so satisfied, and does so consider, but not otherwise, he shall make the certificate.

and of Requiring Officer.

8. In case of such refusal, the Requiring Officer may apply to the Collector to make such certificate.

Petition of objection to be referred to Requiring Officer.

9. Whenever any person shall, as provided in section 13, deny his liability to pay the whole or any part of the amount for which a certificate has been made against him, the Certificate Officer shall ordinarily, under section 15, refer the petition of objection for hearing and determination to the Requiring Officer: Provided always that the Requiring Officer is a Deputy Collector or Assistant Commissioner, or Extra Assistant Commissioner, as described in section 15 of the Act. In all cases it is open to the Certificate Officer to call for a report on the case from the Requiring officer.

Procedure subsequent to disposal of objection.

10. Every officer who hears and determines on a petition of objection shall send the record of the case to the Certificate Officer, who may order that the certificate remain in force, or that it be modified or varied in accordance with the determination of the petition of objection by the Requiring Officer.

Appellate powers of officers specially appointed:

Control of Collector.

11. No officer, although specially appointed by the Lieutenant-Governor to perform the functions of a Collector under the Act, shall exercise the appellate powers of a Collector under the Act unless he is expressly authorized in that behalf by the vesting order; and, unless the contrary shall be expressly specified in such order, every such officer shall exercise his functions subject to the control of the Collector of the District, as if he were not so specially appointed to exercise the functions of a Collector.

Section III.—Miscellaneous.

Effect of service of notice.

1. The effect of the service of notice under section 10 of the Act is conclusively to bind all immoveable property of the judgment-debtor situated within the jurisdiction of the Collector concerned, in the same manner and with like effect as if such immoveable property had been attached under the provsiions of section 274 of the Code of Civil Procedure (Act XIV of 1882). It is therefore superfluous to take out a second attachment before sale for enforcing the certificate under section 19 of the Act.

Method of service of notice.

2. The attention of Collectors and other officers entrusted with the working of the Act is called to the ruling of the High Court in the case Rakhal Chandra Rai Chaudhuri *versus* the Secretary of State for India in Council at page 603, volume XII of the Indian Law Reports, in which the Hon'ble Judges held that, "although no special provision is made "in Bengal Act VII of 1880 as to the manner of service of the notice "prescribed in section 10, it is not to be presumed that the Legislature "intended that service of a less effectual character should be sufficient than

where the value of the property is very small and the cost of deputing a higher officer would be out of proportion to it, a trustworthy peon may be sent out under the special orders of the Collector or Deputy Collector. For all sales of immoveable property proclamation must be issued.

Sale of estates or shares of estates.

"1C. Sales of estates or shares of estates should always be held at the district or subdivisional head-quarters.

Procedure for ensuring a good attendance of bidders and fair bids.

"1D. In order to ensure a good attendance of bidders and fair bids, it is desirable that regular sale days, whether one or more in the month, should be fixed, and that lists of property to be put up at each sale should be published some days in advance. This arrangement cannot, perhaps, be made ordinarily at subdivisions, where sales are few and far between, but it should be introduced where the sales are sufficiently numerous and regular." 12-8-93.

"1A. Sales of moveable property not exceeding Rs. 20 in value shall be held on the spot, as provided in rule 1 of the Rules made by the High Court and issued with their Circular No. 19 of the 28th April 1879 (*vide* page 22 of this Manual). Such sales will necessarily be conducted by peons when they are the attaching officers. Sales of moveable property of greater value may be held on the spot or at the Sadar or subdivisional head-quarters, as may seem convenient and conducive to the securing of good prices. For such sales officers of higher rank than peons should always be deputed when the value of the property is estimated to exceed Rs. 50, and proclamation should be issued. When the value is between Rs. 20 and Rs. 50, the Collector or Deputy Collector may by a special order depute a peon, if he considers it desirable to do so.

Sale of moveable property.

"1B. Sales of immoveable property should ordinarily be held at the district or subdivisional head-quarters, according as the villages may be nearer to either, but sales on the spot are desirable when bids or sufficient bids cannot be obtained at head-quarters. It sometimes hapens that it is only by holding sales in the villages that the property can be disposed of. When this is the case regis-

Sale of immoveable property.

1.N ⊗ "In both cases, however, due notice of sale should be given if the property has eventually to be sold, the direction in rule 1 of the rules made by the High Court (*vide* pages 22-23 of the Certificate Procedure Manual, 1888) being followed where the property is believed not to exceed Rs. 20 in value." 5-4-93.

1,vvs Similarly, if the moveable property has, as a special case, been attached in the first instance under Section 11, it will not be necessary to issue fresh attachment in the course of the execution proceedings. ~~In both cases, however, due notice of sale should be given if the property has eventually to be sold.~~" 10-12-92.

4 "The Legal Remembrancer, on a reference made to him by the Board, has advised that certificates made for rent due to Wards' and Government estates are governed, as regards the question of limitation, by Schedule III, Part III, Act VIII of 1885. Save, therefore, in the special cases mentioned in that Section, no application for execution of a certificate can be received after three years from the date on which the certificate was made, and certificates must be struck off after that period if no execution proceedings are pending. If, however, an application for execution is made before the expiration of the three years, the proceedings for executing the certificate can be carried on after the three years until completion." 8-12-91.

5 *Note* 2.—The Legal Remembrancer, on a reference made to him by the Board, has advised that a Collector cannot in working the Certificate Procedure award costs to a successful objector, there being no provision on the subject of costs in Act VII (B.C.) of 1880, except that contained in section 14, which refers only to the award of costs against, and not in favour of, objectors. 2-2-90.

H.vrr "This opinion has since been confirmed by the Officiating Advocate General." 1-11-92

"it has expressly provided for similar processes under the Civil Procedure "Code. Before, therefore, a service under Bengal Act VII of 1880 can "be effected by posting it on the residence of the party on whom it is "wished to serve it, it must be shown that some attempt has been made "to effect personal service, and that such personal service, for reasons "stated, could not be made.

"In such a case, when the fact of service of notice is denied, the "onus is on the party alleging service to prove it."

3. Though the mode of service is not specially provided for in the Act, it appears to be prescribed by section 5 of Act VII (B.C.) of 1868. Under that section service is primarily to be effected by delivering the copy of the notice to the person to whom it is directed, or to some adult male member of his family, and it is only when the notice cannot be served in either of these ways that it is permissible to serve it by posting the copy on some conspicuous part of his house.

Validity of certificate.

4. A certificate once made by a Collector remains valid as a decree against the debtor, until it is either legally set aside or fully satisfied, or until the execution of it has become barred under the law and rules applicable to the execution of decrees of the Civil Court. Repeated executions may be had on it, but it will still remain valid for what may still remain due. A certificate should therefore continue to be borne on the pending files and the registers of the Collector's office until it has ceased to be effective for one or other of these reasons.

Recovery of costs and interest.

5. The recovery of costs and of any interest which may be due on the certificate must, for the purpose of this rule, be considered on the same footing as the recovery of the sum due on the body of the certificate. Such items must be realized before the demand due on the certificate can be said to be fully discharged.

Clearing of pending files.

6. As a mere matter of office convenience, a Collector may clear his registers by striking off the pending file any certificate which is for the recovery of an amount of which the abandonment or remission has been formally sanctioned by competent authority, whether as an irrecoverable balance or otherwise.

Transmission of certificate to other districts.

7. When the debtor resides in a district other than that of which the Collector has made the certificate and filed it in his office, the Collector making such certificate should transmit to the Collector of the district in which the debtor resides a copy of the certificate, together with the notice in form No. 4 referred to in section 10 of the Act, and with a request that he will cause them to be served on the debtor.

To bind property in other districts.

8. If the Collector making the certificate deires to bind any property of the debtor situate in another district, he should send a separate copy of the certificate, with a request that it be filed in the office of the Collector of such district under section 10.

9. In sending the copy of the certificate to be filed in another Collector's office, the Collector making the certificate should state whether the notice in form No. 4 has been served on the debtor.

Copies to be sent to other districts.

10. When the Collector making a certificate desires that it should be enforced and executed by another Collector under section 19 of the Act, he should send for that purpose copy of the certificate made under the Act, together with a certificate under clause (*b*), section 224 of the Code of Civil Procedure (Act XIV of 1882). If a copy of the certificate under the Act has already been filed in the office of such other Collector, it will be unnecessary to send another copy of it for the purpose of execution. In such cases it will be enough to send the certificate under section 224 of the Code, and to make a reference to the copy of the certificate under the Act which was previously transmitted for the purpose of being filed.

Cost of serving notice.

11. As regards the cost of serving notices and of executing certificates in districts other than that in which the certificate was made, it appears sufficient to point out that the Collector actually executing the process should defray the cost of service, and credit in his own district the recoveries on account of such costs. It is probable that on an average the transactions of one district for another will balance themselves so nearly as not to require the introduction of any special rule on this account.

In cases of application made by Manager.

12. In cases under section 63 of Act IX (B.C.) of 1879, the costs incurred by the Manager of the estate, that is to say, the value of the court-fee stamp affixed to the application made by the Manager to the Collector under section 9 of Act VII (B.C.) of 1880, as well as any other costs advanced by the Manager for the execution of the certificate, will be recovered and remitted along with the amount of arrears of rent included in the certificate.

Process fees and costs in cess cases.

13. The value of court-fee stamps, as will as any other recoverable costs which the requiring Collector may notify to the executing Collector to have been incurred in the case of notices for recovery of cesses served in districts other than that in which the certificates are made, should be recovered and remitted by the executing Collector with the amount of cess or other demand connected therewith included in the certificate.

Court-fee stamps to be affixed to and remain with the application in all cases.

13A. In all cases the court-fee stamps are to be affixed to the application for issue of processes and not to the processes themselves. An endorsement should be made on the processes, certifying that the fees have been paid, and the applications should be retained in the receiving court or office.

Certificates for the recovery of rents due to wards' estates.

14. A certificate under clause 7 of section 7 of the Act for the recovery of rents due to wards' estates is made by the Collector, acting as a Court, but exercising a special and summary jurisdiction. The Collector acting as a Court is not required by law to enforce a certificate unless moved to do so. He is apparently required by section 10, without any special application being made to him, to issue a notice to the judgment-debtor, but he takes no further steps than this, except on the application of the person who is deemed by law to be the decree-holder.

11v "for Government demands." 10-9-92.

"11A. As remittances of sums realised under Act VII (B.C.) of 1880 are made for a *bonâ fide* public purpose, such sums are to be transmitted by means of remittance transfer receipts by the Collectors of the districts in which they are paid to the Collectors of the districts in which the sums are finally to be credited. No charge or fee is to be realised from the payer on this account." 5-3 91.

Rules as to transfer receipts.

14vvv "He should, however, when delay occurs on the part of managers in applying for further proceedings, call upon them to state whether they wish to proceed further with the certificates, and, if so, to make the requisite application and file lists of property to be attached. Should the managers still fail to push the cases on, he should bring the matter to the notice of the Collector."

4-12-91.

15. NOTE.—On a reference made to the Legal Remembrancer, he has expressed an opinion that applications for the execution of certificates filed on behalf of a minor under the Court of Wards are saved by section 7, Act XV of 1877, *i.e.*, the expecution proceedings will not be barred until the ordinary time of limitation has expired after the minor has attained his majority.

11-8-91.

Certificate not cancelled by release of estate.

15. A certificate under the article abovementioned is made for the benefit of the person whose property is under the charge of the Court of Wards at the time when the certificate is made. There is no provision in the law that upon the release of the estate the certificato shall be cancelled; it must, therefore, be regarded as still in force, even though the person for whose benefit it was made may have passed out of the jurisdiction of the Court of Wards.

Who may move the Collector.

16. The Collector may, therefore, be moved to enforce a certificate (1) by the Manager under the Court of Wards, or (2) by the person for whose benefit the certificate was made. The costs incurred in enforcing the certificate must be borne by the estate or by the released proprietor, as the case may be; and if the Collector think fit, he may require that the sum necessary shall be supplied in advance.

No pecuniary burden to be thrown on Government.

17. It must be borne in mind that the extension of the certificate procedure to the recovery of rent arrears in wards' estates was never meant to throw any pecuniary burden on the Government.

Manager to report to Collector realisation under a certificate.

18. Under section 258 of the Civil Procedure Code (Act XIV of 1882) a decree-holder is bound to certify to the Court all payments made out of Court, and all adjustments, in whole or in part, in satisfaction of the decree; and as a certificate under Act VII (B.C.) of 1880 may, under section 19 of that Act, be enforced and executed in the same way as a decree for money is enforced and executed under the Civil Procedure Code, the Manager of a Court of Wards' estate, when any payment is made to him of any money payable under a certificate, or when any adjustment of any amount due under such certificate has been made with his consent, should report the fact to the Collector as provided in section 258 of the Civil Procedure Code. It is not sufficient for the Manager to pay the amount into the treasury, for the Collector, as a Court, is not bound to take cognizance of such payment.

Manager's report to be stamped.

19. The Manager's report to the Collector should bear a stamp of one anna if the amount covered by the certificate is less than fifty rupees (Art. 1 (*a*), Schedule II, Act VII of 1870), and eight annas in any other case (Art. 1 (*b*), *idem*).

Powers as to recovery of cess from joint-holders of estates.

20. Under the old and present cess law alike, all persons who are jointly holders of an estate are jointly and severally liable for the payment of the whole cess. It is in the discretion of the Collector to enter upon the certificate the names of any one or more of the joint-holders he may think proper: he is not bound to enter the names of all the holders. The certificate must, however, be precise, and specify the names of the person or persons against whom it is issued. It is not competent to the Collector to omit all mention of names, and describe the judgment-debtor in general language as holder of the estate. A certificate can only be executed against the persons named therein and upon their property. If the Collector recovers cess from any one shareholder in an estate, in excess of the amount proportionate to the interest of such shareholder

in the estate, such shareholder can avail himself of the remedies indicated in sections 48 and 49 of the Cess Act, IX (B.C.) of 1880. Although this discretionary power of selection has been vested by the law in the Collector, as being essential to the practical working of the law it is a power which must be exercised with much caution and sound judgment in each case to prevent hardship as far as possible.

The Collector should refuse to allow certificates to issue against one or more selected shareholders in an estate in respect of which cess is due, until he is satisfied that the officer in immediate charge of the cess has acted judiciously in electing not to proceed against all the recorded shareholders, and that his selection of shareholders to be proceeded against has been made on sufficient grounds.

The right of selecting the debtor against whom he will proceed, which is reserved to the Collector in these cases, is no more than the law allows to every judgment-creditor in execution of a decree.

It is probable that a judicious exercise of the Collector's discretion in this matter will effect a considerable reduction of the ultimate cost of the proceedings to the defaulters, as well as of work connected with the realisation of the cess.

Notice of existence of arrears to be given prior to issue of certificates.

21. To obviate hardship, District Officers are directed to notify the existence of arrears before certificates are issued—(*a*) by putting up a list of defaulters in their offices, and (*b*) by sending warnings to defaulters by printed post-cards (see Appendix C), in all cases in which there is no reason to believe that the debtor has had intimation of his liability. In the cases of road-cess and zemindari dâk-cess collections, this procedure will probably be unnecessary, except in the rare instances in which the amount of the demand has recently been changed.

Certificate procedure not to be resorted to as a matter of course.

22. At the same time it must never be forgotten that the certificate procedure is not to be looked upon as the normal method of collecting the dues of Government. The officer responsible for the collections will in all cases be expected to show to the satisfaction of the Collector that he has done his best to realise the amount by ordinary means, and that defaulters have been duly warned before the report of their names to the Collector.

Certificates not to be filed indiscriminately in the case of wards' estates.

23. The object of the extension of the certificate procedure to wards' estates is to facilitate collections, and to do this by dispensing with every step between the filing of the plaint and the making of the decree; but it is not intended that certificates should be filed in any cases in which suits would not have been instituted under the former procedure. It rests with Collectors to exercise due care and discretion in the making of certificates, so as to leave no room for any misapprehension of the practice.

Execution of instalment bonds.

24. In all cases where debtors either to Government or to wards' estates are permitted to execute a bond or kistbundi for any sum realisable under the Act, they should be required to add a written agreement to the bond or kistbundi, bringing it expressly under the provisions of clause 8, section 7 of the Act, and in such cases the Collector should see that the instrument is duly registered.

"31. When a certificate has been issued through a mistake and subsequently cancelled, a notice to that effect should be sent by postcard to the party against whom the certificate was issued." 8-1-92.

Notice of cancellation of a certificate.

"22A. The Collectors should not allow certificates to issue in cases where questions of right or title are concerned. When such questions arise, the Revenue Courts are at once to set aside the certificate under section 13 of Act VII (B.C.) of 1880." 3-6-89.

Certificates not to be issued where questions of right or title are concerned.

23A. The Government has directed that as soon as an estate comes under the Court of Wards, the first duty of the Court shall to be carry out the provisions of section 101 and the following sections of the Bengal Tenancy Act, VIII of 1885, to make a settlement of the estate, that is, to have a field measurement made and a complete record of rights prepared. Until such a record of rights is made, and every dispute between landlord and raiyat is decided, and a clear account has been prepared showing exactly what each man holds, what his tenure is, and what the demand from him is, the Manager of the estate is not to be permitted to use the certificate procedure to recover unpaid arrears, but must go on collecting only undisputed rents, or have recourse to the ordinary law. 3-5-92.

2. Every defaulter whose Cognizance of the demand we may be reason to doubt, has been duly warned before the report of his name to the Collector. 10.2-54.

22vvv "It has been brought to the notice of Government that certificates are in some districts filed in excessive numbers, and for demands which would probably have been amicably realized had the claim been brought to the notice of the defaulter. Great caution should be used in the issue of certificates, which are a suitable method for the recovery only of demands of which the debtor was previously cognizant, and which he has neglected to pay in due course." 1-6-89.

Responsibility of Requiring Officer and Certificate Officer for prompt disposal of certificate cases.

"25. The Requiring Officer and Certificate Officer are jointly responsible for the punctual disposal of certificate cases, and are bound to bring to each other's notice and, if necessary, to the notice of the Collector any undue delay. The Requiring Officer is primarily responsible for systematic application for certificates, the prompt disposal of objections when referred to him, the return of the files after such disposal, and the early application for execution, with the details of the property against which the decree is to be enforced. He is also responsible for punctually reporting all payments out of Court as prescribed in Rule 18. Similar responsibility attaches to the Managers of Government and Wards' Estates, except as regards

SECTION IV.—APPLICABILITY OF THE CIVIL PROCEDURE CODE (ACT XIV OF 1882) AND RULES MADE UNDER IT.

Procedure to be followed by District Collectors and officers vested with the powers of a Collector.

1. The High Court having held that (1) the words "in respect of sales in execution of decrees" in section 19 of the Act do not include any proceedings instituted after the sale for setting it aside, and (2) therefore only the provisions of the Civil Procedure Code up to the stage at which the auction sale is held apply to an execution issued to enforce a certificate, and (3) therefore the provisions of sections 311 and 312 are not applicable, the Board directed* that the following procedure should be observed by District Collectors and other officers vested with the powers of a Collector under the Public Demands Recovery Act :—

* See C. O. No. 3 of January, 1887 in Appendix D.

(1). When, in execution of a certificate, immoveable property is sold by an Assistant or Deputy Collector empowered to perform the functions of a Collector under Act VII (B.C.) of 1880, no appeal against the sale lies to the Collector of the district.

(2). The officer holding the sale has no power to set the sale aside.

(3). The remedy of any person aggrieved by such sale is by appeal to the Commissioner under section 2, Act VII (B.C.) of 1868.

(4). The order of the Commissioner on such appeal is final.

(5). The Commissioner may refer the case to the Board under section 26, Act XI of 1859.

(6). As soon as a sale becomes final, the Collector must give the purchaser a certificate under section 28, Act XI of 1859, and must deliver possession under section 29.

(7). The purchase-money must be applied in accordance with section 31, Act XI of 1859.

2. Attention is drawn to the following rules made under the Civil Procedure Code, which should be observed, as far as they may be applicable, in proceedings taken for enforcing certificates.

High Court circular No. 19, dated 28th April 1879. Attachment of moveable property.

3. The following are the rules made by the High Court with reference to the rules made by the Lieutenant-Governor of Bengal, under the provisions of section 269 of the Code regarding the attachment of moveable property :—

I.—When the officer who effects an attachment under section 269, Act XIV of 1882, believes that the property attached does not exceed twenty rupees in value, he shall inform the debtor, or, in his absence, any present adult member of his family, that it will be sold by public auction at once without the issue of any proclamation under section 287. In case the decree-holder or the judgment-debtor, or any person on his behalf, objects to the adoption of the course, the attaching officer will convoke a punchayet of not less than three respectable adult male inhabitants of the

neighbourhood, of whom ordinarily the headman of the village should be one, and will require them to assess the value of the property. If they determine that it exceeds Rs. 20 in value, he shall deal with it under the rules framed by the Lieutenant-Governor of Bengal, otherwise he shall forthwith proceed to sell it by auction, after giving such reasonable notice, as the circumstances of the case admit of, to intending purchasers.

II.—At the time of making an application under section 230, Act XIV of 1882, for the attachment of moveable property in the possession of the judgment-debtor, the decree-holder shall pay into Court the costs of issuing the proclamation of sale under section 287 of the Act, unless the value of the property, the attachment of which is applied for, is alleged by him not to exceed Rs. 20 in value. In this case, should the value of the property, as determined by the above rule, be found to exceed Rs. 20, the Court shall require the decree-holder to pay the costs of the proclamation immediately on receipt of notice of attachment.

Maintenance and custody of live-stock and other moveable property under attachment.

4. The following are the rules referred to in the above clause made by the Lieutenant-Governor of Bengal under section 269 of the Code for the maintenance und custody, while under attachment, of live-stock and other moveable property above the value of twenty rupees :—

I.—The attaching officer shall give the debtor, or, in his absence, any present adult member of his family, the option of having the attached property kept on his premises, or in some other place in the village, on condition that a suitable place for its safe custody be provided by him.

II.—If no such suitable place be provided, the officer shall remove the property to the Court at the decree-holder's expense. In the event of the decree-holder failing to provide the necessary funds, the attachment shall be withdrawn.

III.—Whenever attached property is kept at the place where it is attached, the officer shall forthwith report the fact to the Court, and shall, with his report, forward an accurate list of the property seized, such that the Court may thereon at once issue the proclamation of sale prescribed by section 287.

IV.—If the debtor shall give his consent in writing to the sale of the property without awaiting the expiry of the term prescribed in section 290, the officer shall receive the same and forward it without delay to the Court for its orders.

V.—When property is removed to the Court, it shall be kept by the nazir on his own sole responsibility in such place as may be approved by the Court. If the property cannot, from its nature or bulk, be conveniently kept

in the Court premises, or in the personal custody of the nazir, he may, subject to approval by the Court, make such arrangements for its safe custody under his own supervision as may be most convenient and economical, and the Court may fix the remuneration to be allowed to the persons, not being officers of the Court, in whose custody the property is kept.

VI.—When property remains at the place where it is attached, in the custody of the attaching officer, and any persons other than the judgment-debtor shall claim the same, or any part of it, the officer shall nevertheless, unless the decree-holder desires to withdraw the attachment of the property so claimed, remain in possession, and shall direct the claimant to prefer his claim to the Court.

VII.—If the decree-holder shall withdraw an attachment, or if it shall be withdrawn under Rule II or Rule IX, the attaching officer shall inform the debtor, or, in his absence, an adult member of his family, that the property is at his disposal.

In the absence of any person to take charge of it, or in case the officer shall have had notice of claim by a person other than the judgment-debtor, the officer shall, if the property has been moved from the premises in which it was seized, replace it where it was found at the time of seizure.

VIII.—Whenever live-stock is kept at the place where it has been attached, the judgment-debtor shall be at liberty to undertake the due feeding and tending of it, under the supervision of the attaching officer; but the latter shall, if required by the decree-holder, and on his paying for the same, at a rate to be fixed by the District Judge, and subject to the orders of the Court under whose orders the attachment is made, engage the services of as many persons as may be necessary for the safe custody of it.

IX.—In the event of the judgment-debtor failing to feed attached live-stock, the officer shall call upon the decree-holder, either to pay for feeding it on the spot, or for the expenses attending its removal to the Court. If the decree-holder shall fail to provide for either, the officer shall report the matter to the Court without delay.

X.—When attached live-stock is brought to Court, the nazir shall be responsible for the safe custody and proper feeding of it so long as the attachment continues.

XI.—If there be a Government pound in or near the place where the Court is held, the nazir shall be at liberty to place in it such attached live-stock as can be properly there kept, in which case the pound-keeper will be responsible for the property to the nazir, and shall receive the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description.

XII.—If there be no pound available, or if in the opinion of the Court it be inconvenient to lodge the attached live-stock in the pound, the nazir may keep it in his own premises or he may entrust it to any person selected by himself and approved by the Court. The nazir will in all cases remain responsible for the custody of the property.

XIII.—Each Court shall from time to time fix the rates to be allowed for the custody and maintenance of the various descriptions of live-stock with reference to seasons and local circumstances. The District Judge may make any alterations he deems fit in the rates prescribed by Courts subordinate to him. Where there are two or more Courts in the same place, the rates shall be the same for each Court.

XIV.—The officer deputed to attach moveable property should be furnished with a certificate stating the period for which the court-fee required under Rule (1), Article 4, Parts II, III, IV of the Court-fee Rules has been paid, and he shall give notice thereof to the judgment-debtor or other person at whose instance he remains in possession at the place of attachment, and if such person shall desire that the property shall remain at that place for a longer period, he shall be bound to pay into Court, in advance, the further fee as required by Rule IV.

Amount of deposit to be made by decree holder purchasing with leave of the Court.

5. The following rules have been framed by the High Court, under section 652 of the Civil Procedure Code, regarding the amount of deposit to be made by a decree-holder purchasing with the leave of the Court:—

I.—When the amount to be paid by a decree-holder buying with the leave of the Court, and who has signified his intention of claiming a set-off, is not more than the amount due to him under the decree, and for the costs of executing it, the deposit required shall not exceed the amount of the court-fees due on the sale under clause F, Article 6, Parts II, III, and IV of the rules under the Court-fees Act, section 20, clause I.

II.—When the amount of purchase-money exceeds the amount due to the decree-holder as above, but such excess, together with the amount of court-fees due for the sale does not exceed 25 per cent. of the purchase-money, the deposit required shall not exceed the amount of such excess and court-fees.

III.—When the excess, with or without the court-fees for the sale, is greater than 25 per cent. of the purchase-money, the full deposit of 25 per cent. shall be required as authorized by section 306.

IV.—Whenever the amount due as court-fees for the sale of the property has been deposited under Rule I or Rule II, the Court shall, at the time of confirming the sale, direct that such sum be applied by an officer of the

Court to the purchase of the necessary stamps, and shall cause the same to be attached to the proceeding containing the order of confirmation, and to be then and there properly defaced. All Judges will be held personally responsible for compliance with this order which, if attended to at the proper time, will give no appreciable trouble.

Immoveable property.

6. Although the Board consider it unnecessary to direct that the High Court rules relating to the sale of immoveable property shall be held to be binding on Collectors, they desire to point out that the whole tendency of the certificate law is to proceed to sale only in the last resort, and to afford the judgment-debtor every reasonable opportunity of saving his property. The Board do not say that the sale of immoveable property in execution of a certificate is a proceeding which should never be resorted to, but they believe that cases will seldom occur in which the actual completion of a sale is necessary; and they are certainly of opinion that all officers should exercise the stringent powers which the Act puts into their hands in a lenient and considerate spirit.

Certificates of sale to be stamped.

7. Act I of 1879, Schedule I, Article 16, applies to all certificates of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Court or Collector or other Revenue officer. Such certificates of sale must, therefore, be duly stamped.

Orders of attachment of estates to be notified by Civil Courts to the Collector of the District concerned.

8. The circular order of the High Court, No. 2 of 10th January 1871, directs that all orders by all Civil Courts for the attachment of estates and shares of estates shall be immediately notified to the Collector of the district within which such estates or shares are situated.

It is the duty of Collectors to ascertain whether this circular order is duly complied with. If it is found that this is not the case, the Collector should address the Judge of the district, requesting him to cause the practice enjoined by the High Court to be observed in all the Courts of the district.

Section V.—Returns and Registers.

Return V.

1. The form of quarterly Return V (Appendix E) of certificate cases under Act VII (B.C.) of 1868 and Act VII (B.C.) of 1880 should be transmitted by District Officers to the Commissioners.

Registers.

2. The necessity of organising the system on which the mass of business under the Act is carried on, as between the different branches of the Collectorate, has led to the establishment of three registers in the Certificate Department, which are to be known as Nos. 9, 10, and 11 (Appendix F).

3. It will be observed that Register 9 is a register of requisitions, and will be kept up by the Requiring* Officers, while Register 10 is a

* *Note.*—Each Requiring Officer on the district staff is to keep a separate register in form 9.

register of certificates, and will be kept up by the Certificate Officer. In all respects they are distinct and separate from one another. Every certificate being entered in the Requiring Officer's register before it is made over to the Certificate Deputy Collector, this register will afford an efficient check that no certificate is omitted from Register 10. The existence of this register will enable the Requiring Officer to keep up a persistent and regular system of requisition upon the Certificate Deputy Collector, until the demand of the certificate is realised. The value of the Register 9 as a system of check is therefore based on the assumption that the offices of the Requiring Officer and of the Certificate Deputy Collector are entirely separate. Under the system in force these offices are, as a rule, to be separate. If, however, in any case, as in Chittagong (under the arrangement sanctioned for khas management) the functions of requisition and of execution of the certificate are unavoidably exercised by the same officer, both the registers prescribed must be kept up by that officer, and it will be necessary for him to exercise a special personal vigilance to see that the check which these registers effect on two departments under his own control is duly maintained.

4. The third register, 11, is intended solely as a check on the Nizarut. It must therefore not be kept up by the Nazir, nor in his office. The Nazir's signature will, however, be obtained in it as processes are made over to him, and returned by him, after service.

3A. Difficulty having been experienced in exercising a proper check over the two Registers 9 and 10 in consequence of their being kept in different offices, and also in ensuring that requisitions are promptly attended to, and that the stamps attached to such requisitions are not tampered with, the Board direct that the procedure indicated in the subjoined rules is to be strictly observed in future :—

Checks to be exercised.

(1) All requisitioning officers' Register 9 must be submitted weekly to the Collectorate; the serishtadar is to be held responsible that they are compared with Register 10 and returned without delay.

(2) Requisitions are to be addressed and sent to the Certificate Deputy Collector in a cover which he is to open. He is to have all stamps punched in his presence.

(3) Requisitioning officers are also to send lists in duplicate, showing the requisitions enclosed in the cover, with necessary details as to stamps. This list is to be compared by the Deputy Collector with the requisitions received, and he will then sign one copy and return it to the requisitioning officer as a receipt.

3-5-89.

"(I) Register No. 9 of all requisitioning Officers must be compared with register No. 10. This comparison will be made monthly, provided that requisitions have been sent to the certificate Officer during the previous month. The Sherishtadar will be held responsible that the comparison is made quickly and register No. 9 returned without delay to the office from which it was received. When requisitions are sent to sub-divisional officers who exercise the powers of a certificate officer, the comparison will be made in the Sub-divisional Office". — 3-1-90.

APPENDIX A.

[*See Section I, rule* 1.]

List of demands falling under sections 5 *and* 7 *of Act VII* (*B.C.*) *of* 1880.

Description of demand.	Act by which it is declared realizable as an arrear of revenue.
I.—Under Section V.	
(*a*) *Clause* 1.	
Balance of sale proceeds remaining after deduction of expenses of sale, being insufficient to liquidate the arrears of revenue due from an estate or tenure	.....
(*b*) *Clause* 2.	
Arrears of revenue due from a farmer	.....
II.—Under Section VII.	
Article 1.	
Fines imposed by the Board on persons failing to attend in person when required	Regulation II of 1793, section 33.
Fines imposed on proprietors, farmers, &c., omitting or refusing to attend or cause their agents to attend with accounts, information, &c., required by Collectors with sanction of the Board in cases connected with their public duty and not expressly provided for by any Regulation in force ...	Regulation XII of 1817, section 32. Act XX of 1848, section 1.
Sums adjudged by Collectors in favour of patwaris and fines...	Regulation XII of 1817, section 36.
Fines imposed by the Board on persons not attending or not producing accounts before Collector, &c., engaged in resumption enquiries	Regulation II of 1819, section 13.
Fines imposed by the Board on persons resisting such proceedings	Regulation II of 1819, section 14.
Specific sums of money, or costs or damages awarded by Collectors engaged in enquiries under Regulation VII of 1822	Regulation VII of 1822, section 23, clause 3.
Fines imposed on proprietors, farmers, &c., neglecting to provide supplies, boats, temporary bridges, &c., for troops upon Collector's requisition	Regulation VI of 1825, section 4.
Charges of witnesses and other costs adjudged by Collectors enquiring in course of settlement proceedings into validity of grants claimed to be held revenue-free or at fixed revenue, or exercising judicial powers under the Regulations *then* in force	Regulation IX of 1825, section 5, clause 10.
Money recoverable from public accountants and their sureties on account of loss or defalcation in their accounts ...	Act XII of 1850, section 4.
Opium advances	Act XIII of 1857, section 16.
The difference between a bid not made good and the proceeds of a second sale necessary in consequence... ...	Act XI of 1859, section 23.
Income-tax	Act II of 1886, section 30(1).
Recovery of fees under the Elephant Preservation Act ...	Act VI of 1879, section 10.
Sums due from officers under the Court of Wards and their sureties	Act IX (B.C.) of 1879, section 46.
Amounts payable in respect of improved or reclaimed lands under drainage scheme	Act VI (B.C.) of 1880, sections 26 and 38.
Article 2.	
Money due from sureties of a farmer	.....
Article 3.	
Zemindari dâk cess	Act VIII (B.C.) of 1862, section 9.
Payment of full court-fee on probate or letters-of-administration and certificates in cases where less value is paid in the first instance	Act VII of 1870 (The Court-fees Act), sections 19G, 19H, and the note to paragraph 12 of schedule 1.
Famine loans	Act IV (B.C.) of 1875, section 1.
Survey charges	Act V (B.C.) of 1875, section 57.
Irrigation rates	Act III (B.C.) of 1876, sections 42, 73, and 85.
Land registration fees, fines, &c.	Act VII (B.C.) of 1876, section 82.
Fees, fines, cost, &c., in partition cases	Act VIII (B.C.) of 1876, section 138.
Sums due from excise farmers	Act VII (B.C.) of 1878, section 36.

Description of demand.	Act by which it is declared realizable as an arrear of revenue.
Article 4.	
Money due from a farmer of tolls under the Canals Act of 1864 or his sureties	.....
Article 5.	
Arrears due from farmers of ferries	.....
Article 6.	
Arrears of revenue or rent payable to the Secretary of State for India in Council from a ryot or from any other person holding any interest in land, pasturage, forest rights, fisheries, and the like	.....
Article 7.	
Arrears of rent due from estates under the Court of Wards, &c.	.....
Article 8.	
Any sum payable to a public officer of Government and contracted for as payable under the Act by a written and duly registered instrument	.....
Article 9.	
Any fee, duty, tax, or other demand which by any Act passed after Act VII (B.C.) of 1880 shall be declared to be recoverable under the provisions of Act VII (B.C.) of 1880, section 7 clause 9, viz.—	
(1) Arrear of road and public works cesses	Act IX (B.C.) of 1880, section 98.
(2) Cesses recoverable from shareholders in estates by their registered co-sharers	Act IX (B.C.) of 1880, section 49.
Interest on arrear of rent due to wards' estates and costs incurred in executing certificate	Act III (B.C.) of 1881, section 10.
(4) Expenses incurred by the Court of Wards after release of estate	Act III (B.C.) of 1881, section 11.
(5) Embankment expenses	Act II (B.C.) of 1882, section 70.
(6) Loans for Land Improvement	Act XIX of 1883, section 7.
(7) Loans to Agriculturists	Act XII of 1884, section 5.
(8) Expenses apportioned between landlord and tenants under Chapter X of the Bengal Tenancy Act	Act VIII of 1885, section 114.

APPENDIX B.

[*See Section I, rule* I.]

Extract from the Board's letter to Government, No. 267A; dated 29th April 1882.

3. At first sight it appears as if the special appointment of an officer to exercise the powers of a Collector under the Act would be to transfer from the Collector of the district the administration of one of the most important and responsible portions of a Collector's functions. But this view is more apparent than real; for the Act, as it stands, empowers a Collector to make over to any subordinate all business under the Act with one or two exceptions. The Board have examined the question in communication with some of the local officers, and the opportunity seems now a good one for considering what restrictions should be put on the exercise of such powers, whether by an officer specially appointed by the Lieutenant-Governor to exercise the functions of a Collector under the Act, or by any other subordinate of the Collector.

4. Section 12 allows any person on whom a notice of a certificate has been served under section 10 of the Act to appear before the Collector by whom such certificate has been made within the 30 days which must elapse before any compulsory action is taken, and there to deny his liability to pay the whole or

any part of the amount for which such certificate has been made and filed against him. Under section 15 the Collector may refer any such petition of objection to any Deputy Collector, &c., subordinate to him, who shall "hear and determine such petition accordingly." This is really the most important and responsible function under the Act, and no special order from the Lieutenant-Governor is required to enable a Collector to make over the discharge of it to a subordinate (subject of course to the ordinary checks of appeal to and control by the Collector.)

5. It should be clearly understood that the special appointment by the Lieutenant-Governor, which is the subject of this letter, will not have the effect of conferring on the officer specially appointed any powers or functions preceding the actual making of the certificate. The power of determining that the sum to be recovered is due to the Collector will generally be exercised by another officer under powers vested in him irrespectively of this Act. For instance, the fine to be recovered will have been imposed in a settlement proceeding by the Settlement Officer, or in a proceeding under the Cess Act by the Deputy Collector in charge of the Cess Department, or the balance of rent due from a tenant in a Government estate which is to be recovered by compulsory means will have been determined by the Deputy Collector who is more immediately in charge of the management of Government estates. Each of these officers will notify the due so determined to the officer specially appointed by the "Lieutenant-Governor to exercise the power of a Collector under the Act," with a view to its being recovered by the certificate procedure.

6. The only substantial point for the exercise of this officer's discretion at this stage will be whether the amount so determined to be due shall be recovered by the certificate procedure or not; if so, he will "make under his hand," that is, sign the certificate which will start that procedure, and in regard to which the notice under section 10 will issue. Then, if within the 30 days which must elapse before any compulsory action can be taken on that notice, an objection is presented by the person against whom the certificate has been made denying his liability to pay the whole or any part of the amount for which such certificate has been made and filed against him, the officer in question, in virtue of his special appointment to exercise the functions of a Collector, will have power either to hear and determine the objection himself under section 12 *et seq.*, without special reference from the Collector, or to refer it for hearing and determination to any subordinate of the Collector. As pointed out in paragraph 4 above, this officer or any other subordinate of the Collector is already empowered by the Act to hear and dispose of such a petition of objection if referred to him for disposal by the Collector.

7. When once the certificate is made, any subordinate of the Collector may, under section 19, exercise all powers necessary to its execution, with the one reservation specified in the section.

8. Thus the special appointment by the Lieutenant-Governor will have the effect of conferring on the officer appointed no powers not already vested in him by law, except those specified in article 1 of the annexed draft instructions; and the question is, how far restrictions should be imposed on the exercise of these powers by specially appointed officers generally.

9. The annexed list embraces, it is believed, all the classes of cases in which a Collector is called upon to make certificates. It will be seen that in many of them the "making of a certificate under his hand" for the recovery of the demand is the mere formulation of an order already passed by competent authority in the exercise of legal powers. Such are the items specified under article 2, clause (*b*), section 8 of the Act—"fines imposed or costs, charges and expenses, damages, duties, or fees adjudged by a public officer under the provisions of any law for the time being in force."

In such cases there can be no hesitation in vesting a subordinate of the Collector with powers to make the certificates.

10. In these cases there can be no room for objection under section 12 as to whether the amount is due or not, nor as to whether the person named is liable; the order of the authority who imposed the fine (and who has himself moved for its realisation by certificate) in itself creates the liability. In such cases the necessity which the law imposes of allowing 30 days to expire after the issue of notice of certificate under section 10 before process of attachment or any other compulsory process issues is so much grace allowed to the person who is liable to pay without attaining any other object than to give him time for payment.

11. In almost all other classes of cases, such as arrears of revenue remaining due after the sale of an estate, and in such cases as those marginally noted, the fact that the amount is due from the person named will have been ascertained and pronounced upon by the responsible revenue officer in charge of a particular branch of the business of a Collector's office on the best information which the records of the office afford.

Arrears of rent from tenants on Government estates, sums due from farmers of ferries, or of excise, or of tolls; arrears of different taxes and cesses; irrigation rates, embankment expenses, famine loans, fees authorized by law on land registration, and other revenue proceedings; court-fees on probates or letters-of-administration.

In cases of this nature a copy of the certificate and notice of the certificate is issued to the person named therein, and he is invited to come forward under section 12 with any objection he may have, denying his liability, in default of which he is warned that process will issue after 30 days for the realisation of the amount as an undisputed due, the debtor being prohibited in the meantime from alienating his immoveable property. The real difficulty and responsibility in such cases begins when an objection under section 12 is presented.

12. The accompanying draft of a set of instructions has been prepared by the Board. In accordance with these views, it is believed that, under the restrictions therein imposed, an officer might with safety be specially appointed by the Lieutenant-Governor in each district of these provinces to exercise the functions of a Collector under the Act, with the result that the Collector personally would be relieved of a mass of detail work which might be done as well by his subordinate, and that he would at the same time be enabled to retain his hold on the really important points in the administration of the Act.

APPENDIX C.

[*See Section III, rule* 21.]

Post-card Warning.

Take notice that you are liable to Government for the sum of Rs. on account of (†). If you do not pay this amount within seven days, a certificate will be made against you, and the cost of executing the same will be levied from you according to law.

APPENDIX D.

[*See Section IV, rule* 1.]

Circular Order No. 3 *of January* 1887.

1. The Board's Circular No. 1 for August 1883 is cancelled.
2. The attention of all officers who are entrusted with the working of the Public Demands Recovery Act, 1880, is drawn to the judgment passed by the High Court on the 30th April 1886, in the case noted in the margin. The portions of this judgment, which bear upon the present question, are extracted below.

MR. REYNOLDS.

Mitter and Norris, J. J.

Sadhusarun Singh and another, plaintiffs ... ... *Appellants*

Versus

Panchdeo Lall and others, defendants ... ... *Respondents*

I. L. R. 14, Calcutta, 1.

3. In this case a share of an estate belonging to the plaintiffs was sold on the 16th September 1881, in execution of a certificate for arrears of road and public works cesses due up to the September kist of 1880, and was purchased by

† Here enter the nature of the demand, as cesses, water-rate, embankment dues, &c.

the defendants. The plaintiffs applied to the Collector to set aside the sale, and their application was rejected. They appealed to the Commissioner, who rejected the appeal; and they then brought a suit in the Civil Court, which was dismissed by the Subordinate Judge, but was remanded by the High Court on the grounds set forth in their decision.

4. The learned Judges, after pointing out that a certificate does not become absolute, unless the notice under section 10 is shown to have been served, proceed as follows to explain the law regarding appeals from sales of immoveable property held in execution of certificates :—

"Supposing that there are material irregularities in publishing or conducting a sale held in execution of a certificate issued under Act VII (B.C.) of 1880, and supposing such irregularities have caused substantial injury to the owner of the property sold, what are his remedies? Is he entitled to proceed under section 311 of the Civil Procedure Code, or section 2, Act VII (B.C.) of 1868, by way of appeal to the Revenue Commissioner against such sale? or is he entitled to pursue both these remedies?

"There is no express provision in Act VII of 1880, or the cognate Acts, that the judgment-debtor in a case like this would be entitled to pursue both remedies. It would also create very great confusion, and might result in conflicting orders of concurrent courts, if it were held that both remedies are open to him. Section 19 of Act VII (B.C.) of 1880 says that all the practice and procedure provided by the said Code of Civil Procedure in respect of sales in execution of decrees, &c, shall apply to every execution issued to enforce a certificate. It seems to us that the words 'in respect of sales in execution of decrees' do not include any proceedings instituted after the sale for setting it aside. We think therefore that only the provisions of the Procedure Code up to the stage at which the auction sale is held apply to an execution issued to enforce a certificate, and therefore the provisions of sections 311 and 312 are not applicable. * * * * We are of opinion that the only remedy of a judgment-debtor, whose property has been sold in execution of a certificate issued under Act VII (B.C.) of 1880, and who has sustained substantial injury by reason of a material irregularity in publishing or conducting the sale, is by way of an appeal under section 2 of Act VII of 1868, Bengal Council * * * * * * We think that by the force of section 2, Act VII of 1880, the provisions of section 2, Act VII (B.C.) of 1868, became applicable to a sale under an execution issued upon a certificate made under Act VII of 1880 * * * * * The effect of this section is that Act XI of 1859 and Act VII of 1868, and Act VII of 1880 are to be considered as if the provisions contained in them were contained in one Act, so far as such construction is consistent with the terms of the lastmentioned Act. That being so, the sale in this case may be considered as a sale under Act VII of 1868, within section 2 of that Act. The appeal under that section against the sale therefore lies to the Revenue Commissioner. Similarly, all sales under Act VII of 1880 would become final in the manner and at the time provided in section 27 of Act XI of 1859."

5. In accordance with this decision of the High Court, the following procedure should be observed by District Collectors and other officers vested with the powers of a Collector under the Public Demands Recovery Act :—

(1). When, in execution of a certificate, immoveable property is sold by an Assistant or Deputy Collector empowered to perform the functions of a Collector under Act VII (B.C.) of 1880, no appeal against the sale lies to the Collector of the district.

(2). The officer holding the sale has no power to set the sale aside.

(3). The remedy of any person aggrieved by such sale is by appeal to the Commissioner under section 2, Act VII (B.C.) of 1868.

(4). The order of the Commissioner on such appeal is final.

(5). The Commissioner may refer the case to the Board of Revenue under section 26, Act XI of 1859.

(6). As soon as a sale becomes final, the Collector must give the purchaser a certificate under section 28, Aet XI of 1859, and must deliver possession under section 29.

(7). The purchase-money must be applied in accordance with section 31, Act XI of 1859.

APPENDIX E.

[*See Section V, rule* 1.]

Quarterly Return V.—Certificates filed under Act VII (B.C.) of 1880.

Description of Certificate.	Number pending from last quarter.	Number filed during quarter.	Total.	Disposed of during quarter.				Pending.			Number of appeals to Commissioner or Collector instituted in quarter, section 16.	Number of civil suits brought in quarter to cancel certificates, section 8 (*b*).	Amount covered by certificates made during the quarter.	Remarks.
				Cancelled on objection.	Struck off.	Fully discharged.	Total.	*More than six months.*	Less than six months.	Total, column 4, less column 8.				
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1. Of all kinds under section 5, Act VII (B.C.) of 1880														
2. To realise arrears of rent due to Government, clause 6, section 7														
3. To realise embankment dues, section 70, Act II (B.C.) of 1882 ...														
4. To realise water-rates, &c., Act III (B.C.) of 1876														
5. To realise cesses, Act IX (B.C.) of 1880														
6. To realise Court of Wards' demands, clause (7), section 7, Act VII (B.C.) of 1880														
7. All other certificates made under section 7														
Total ...														

N.B.—Pending cases shown in column 9 must be explained in the Explanation sheet.

"(I) Register No. 9 of all requisitioning officers must be compared with register No. 10. This comparison will be made monthly, provided that requisitions have been sent to the certificate officer during the previous month. The Sherishtadar will be held responsible that the comparison is made quickly, and register No. 9 returned without delay to the Office from which it was received. When requisitions are sent to Sub-divisional Officers who exercise the powers of a certificate officer, the comparison will be made in the Sub-divisional Office." - 3-1-90

Note 1.—All requisitioning officers' Register 9 must be submitted weekly to the Collectorate ; the serishtadar is to be held responsible that they are compared with Register 10 and returned without delay. 3-5-89.

EXPLANATION SHEET FOR RETURN V.

Table.	Heading.	Column.	EXPLANATION.

APPENDIX F.

[*See Section V, rule* 2.]

***Register* 9.—*Requisitions for Certificates under Act VII* (*B.C.*) *of* 1880 (*to be kept by each Requiring Deputy Collector or other public officer issuing the notice under section* 9 *of the Act**).**

1	2	3	4			5	6	7	8	9	10
Serial number.	Nature of claim.	Name and address of defaulter.	Amount due.			Date on which requisition is made to the Certificate Officer. (Initials of Certificate Officer.)	Date on which petition of objection, if any, is received by the Requiring Officer from Certificate Officer for disposal.† (Initials of Requiring Officer.)	Date of disposal of petition.	Date of return of petition with connected file to Certificate Officer.	Date of final disposal of certificate with note of the manner in which disposed of (whether payment or item struck off as irrecoverable).	REMARKS.
			Rs.	A.	P.						

* If the Requiring Officer is not a Deputy Collector, columns 6, 7, and 8 will of course remain blank.

† *See* rules 9 and 10, Section II of this Part of this Manual.

[*See Section V, rule 2.*]

Register 10.—*Certificates made under Act VII* (*B.C.*) *of* 1880 (*to be kept by the Certificate Officer*).

1	2	3	4	5			6	7	8	9	10			11	12			13			14			15	16	17
Serial number.	Date of receipt by Certificate Officer of notice from officer other than a Collector under section 9 (if any).	Name and address of debtor.	Nature of claim.	Amount of claim.			Date of certificate.	Section of Act under which certificate is made.	Date of receipt of petition under section 12.	Date of Certificate Officer's order forwarding the petition to the Requiring Officer for disposal.	Amount of claim, including costs, if any, ordered under section 14.			Date of receipt of order in appeal.	Amount of claim, including costs, if any, under appellate order.			Amount of claim satisfied by payment on issue of the notice of certificate under section 10, without further compulsory process.			Amount realized by any further process.			Date and number of the treasury challan.	Entry of satisfaction by Collector, *vide* section 22 (*b*).	REMARKS.
				Rs.	A.	P.					Rs.	A.	P.		Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.			

NOTE 1.—In cases of notices under section 9 of the Act, columns 1, 2, 3, 4 and 5 will be filled in from the notices, and the subsequent procedure in connection with the issue of certificates under the same section of the Act will be shown in some or all of the columns 6 to 16.

2.—In the case of other certificates issued, entries will be made in columns 3 to 16 as necessary.

3.—Amounts should be entered in column 13, even though they are paid after the making and disposal of an objection under section 12.

4.—The particular proce s, such as attachment of property, sale, &c., under which any sum entered in column 14 is realised, should be indicated.

Register 10.—*Certificates made under the Public Demands Recovery Act, VII (B.C.) of* 1880, *to be kept by the Certificate Officer.*

Note (*a*).—If separate volumes of the register are kept for Road Cess Wards, &c., it will not be necessary to describe the nature of the claim in column 5, as "Road Cess for the kist of.....&c.," but it will suffice merely to mention the particular kist or instalment. In the volume for Miscellaneous cases, however, the particular department should be mentioned in this column.

Note (*b*).—Process fees or costs under section 14 of the Act should be shown separately in sub-column (*a*) of column 13.

Note (*c*).—Delays due to appeals should be noted in column 15.

1. Serial number of the year.
2. Serial number of requisition in Register 9 or name of other district from which received.
3. Date of receipt by Certificate Officer.
4. Name and address of debtor.
5. Nature of claim.
6. Amount of claim.
7. Date of certificate.
8. Section of Act under which certificate is made.
9. Petitions under section 12—
   (*a*) Date of receipt.
   (*b*) Date of forwarding to officer by whom petitions are heard.
   (*c*) Date of return from such officer.
10. Amount of claim decreed on objection, with costs, if any, allowed under section 14.
11. Amount of claim, with costs, if any, under order of Appellate Court.
12. Notice under section 10 and subsequent processes—
   (*a*) Date of issue.
   (*b*) Kind of process, *i.e.*, whether notice under section 10 or warrant of attachment, &c.
13. Realizations—
   (*a*) Amount.
   (*b*) Number of chalan.
   (*c*) Date.
14. Entry of satisfaction by Collector.
15. Remarks.

7-12-91.

[*See Section V, rule* 2.]

Register 11.—*Processes made over to the Nazir for service, and of orders issued to him for execution in connection with certificates filed.*

1	2	3	4	5	
Serial number.	Number and date identifying the certificate case with entry in Register 61A.	Character of process made over to the Nazir [and date when returnable].	Date of issue to Nazir [with his initials].	Date of return by Nazir [with his initials].	REMARKS.

N.B.—This register being intended as a check on the Nazir's department, must not be left in the hands of the Nazarut establishment.

E. D'S. & others—Reg. No. 11050J—700—28-3-89.

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